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Supreme Court, U.S.
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No. 03-837

IN THE
SUPREME COURT OF THE UNITED STATES

♦

MICK C. CHAPEL and JENNIFER CHAPEL

Respondents,

vs.

DAVID DERRINGER,

Petitioner,

♦

On Petition For a Writ of Certiorari
To The New Mexico Supreme Court

♦

PETITION FOR WRIT OF CERTIORARI

♦

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QUESTIONS PRESENTED

1. Whether a citizen can be singled out, (Chapels) to be able to violate state water laws, prohibited by both NM Statutes and NM Constitution Article 16, and use those same violations against another citizen to deprive guaranteed statutory rights as enacted by the Legislature in New Mexico.

2. Whether a citizen can be singled out, (Chapels) to be able to violate NM state water laws, prohibited by both NM Statutes and NM Constitution Article 16, and be immune for 19 years of violations that are subject to fines of $250.00 and 6 months of jail for each day of violation, pursuant to NMSA 1978, 72-8-4, 72-8-6 and 72-12-11.

3. Whether any state judge can act without either jurisdiction or judicial capacity to Order acts of deprivation and criminal destruction of legal, statutory stock ponds located on Private Property outside of his jurisdiction pursuant to the Private Property Act of Title 42 U.S.C. Section 1982, and whether a citizen can be singled out to be deprived of legal, statutory stock ponds as provided legally for by Legislature when they are located on Private Property pursuant to the Title 42 Section 1982 Private Property Act, and outside of both Chapel's and court's jurisdiction by being in compliance with all laws.

4. Whether any state judge can Order another citizen to commit a crime against another of trespass and destruction of legal, statutorily compliant private property in violation of the NM criminal code of NMSA 1963, 30-14-1 and 30-15-1, in violation of 30-28-1, while acting in a conspiracy under 30-28-2.

5. Whether any state judge can Order the criminal destruction of the only road of necessity to the home of another citizen, when that road is historical, legal and "private" within the meaning of Title 42 U.S.C. Section 1982, and outside of both jurisdiction and judicial capacity of the state justice.

6. Whether any state judge can continue in any case in jurisdictional defect of both parties and subject matter, without the necessary and indispensable affected property owners in litigation (without opportunity to be heard), and without the necessary and indispensable property owners needed for the litigation of the subject matter, and then later force the property owner denied due process to succumb to any judgement, order, or injunction of which he was a **NON-PARTY** in order to force an illegal injunction against statutory rights.

7. Whether any state judge can Order **future** deprivation of due process, equal protection, and the ability to represent oneself Pro-Se in any court of law in the United States, and do so with intent on protection of the known violation of state laws by another in conspiracy with the justices in treason against America in total violation of the 14th Amendment.

8. Whether any justices that Order and sustain any Order against the 14th Amendment of the US Constitution can remain on the bench pursuant to the mandates of the United States Constitution 14th Amendment, when the 14th Amendment Section 3 mandates their removal from all public service after attacking the United States Constitution; and whether any judge, having previously taken an oath, Swearing to God to uphold the US Constitution, can order denial of any citizen's "**FUTURE**" ability to file complaints, motions, pleadings, discovery requests,

or other legal papers, or legally deny and deprive use of 14th Amendment rights to defend against suit, and whether he can order any citizen to not be able to properly represent themselves Pro-Se in a court of law when they cannot afford an attorney.

9. Whether any state judge can constantly work willfully outside of jurisdiction and judicial capacity in pushing forward a case with known and proven jurisdictional defect of both parties and subject matter, and then mis-use power to condone proven perjury and fraud, ruin the lives of the litigants in a conspiracy against rights, and then Order a stop to the due process of future litigation by the citizens opposing this fraud, and also conduct this unconstitutional Order to deny due process to protect himself from federal Civil Rights suit.

10. Whether a state judge can mis-use his power to conspire with others to deny and deprive equal protection, and mis-use his powers to enslave, steal real estate, persecute and order criminal trespass and criminal destruction of private property outside of his jurisdiction and judicial capacity.

11. Whether the Chapels and state judge Fitch can sexually harass, intimidate, phone harass, and personally stalk a litigant and threaten the life of a litigant to stop legal due process, and not be accordingly prosecuted for crimes of obstruction of justice and obstruction of proceedings.

12. Whether Chapels can conduct proven perjury and fraud to courts of law to use these violations of criminal statutes in correlation with their violations of water laws to single out and persecute another and to enslave another citizen to their acts in violation of the US Constitution 13th Amendment.

13. Whether the Chapels and the conspirators of state

judges can mis-use their power to protect known criminal actions and "racketeering" industries in violation of the RICO ACT of Title 18 Section 1962 by use of an Order against the 14th Amendment for any citizen not to litigate which exposes these actions, which is in violation of the "Whistleblowing Act" of 1989.

14. Whether any state judge can willfully mis-use his power to deliberately violate state statutes, Constitution, and all case laws, when he swore to God under oath not to do these egregious acts, and when the Code of Judicial Conduct forbids and prohibits these acts under Canon 3 (B)(2), and would a state judge or court still be immune from Civil Rights suit from such claims by judicial immunity.

15. Whether any state judge can ever order injunction against, damages against, orders to destroy, and orders to attack the legal, historical and private stock ponds in New Mexico located on private property guaranteed by the legislature intent of NMSA 1997, 72-5-32 and 72-9-3 when he has no jurisdiction on private property pursuant to the Private Property Act of Title 42 U.S.C. Section 1982.

16. Whether any state judge can order fines, damages and persecution against a citizen for legal ownership of real property and the private legal and statutory compliant structures contained on that private property without his jurisdiction and judicial capacity in violation of the 14th Amendment, Title 42 Section 1981(a), and the private protection mandated by Title 42 Section 1982.

17. Whether any state judge can single out a party to be allowed to constantly allow that person to file repeatedly abuse

of process and malicious prosecution law suits against another by use of their own violation of state laws.

LIST OF PARTIES

In the proceedings below, Party David Derringer hereafter may be referred to as the Petitioner, and is only one of the Pro-Se Defendants of the underlying state Case CV-94-10 using his due process under the 14th Amendment to file this Petition. Other Defendants of the underlying case are Pro-Se parties Susan Nevitt and Norma Nevitt, not party to this Petition. David Derringer is entitled to bring this action by himself Pro-Se pursuant to US Supreme Court Rule 12(4). Mick and Jennifer Chapel may be referred to collectively as the Respondents. The other Defendant Pro-Se parties of underlying state Case CV-94-10 (S.Ct. No. 28,173 and No. 28,217) [Susan Nevitt and Norma Nevitt] do not appear in the caption of the case on the cover page in accordance with the abilities under US Supreme Court Rule 12(4).

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully submits this Petition for a Writ of Certiorari and prays that a Writ of Certiorari issue to review the New Mexico Supreme Court decisions of No. 28,173 and No. 28,217.

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OPINIONS BELOW

Cases from State Court:

The Order denying Petition for a Writ of Certiorari of underlying state Case CV-94-10 Chapels v. Nevitt et al appears at Appendix A to the petition and is referenced as Mick C. Chapel and Jennifer Chapel v. Susan M. Nevitt, Norma J. Nevitt and David Derringer and it is referred to as NM Supreme Case No. 28,173 filed August 11, 2003.

The Order denying a Rehearing on the Supreme Court No. 28,173 is referenced as Mick C. Chapel and Jennifer Chapel v. Susan M. Nevitt, Norma J. Nevitt and David Derringer and it is referred to as NM Supreme Case No. 28,173 filed September 2, 2003.

The Order denying Petition for a Writ of Certiorari of underlying state Case CV-94-10 Chapels v. Nevitt et al appears at Appendix A to the petition and is referenced as Mick C. Chapel and Jennifer Chapel v. Susan M. Nevitt, Norma J. Nevitt and David Derringer and it is referred to as NM Supreme Case No. 28,217 filed September 19, 2003.

The Order denying a Rehearing on the Supreme Court No. 28,217 is referenced as Mick C. Chapel and Jennifer Chapel v. Susan M. Nevitt, Norma J. Nevitt and David Derringer and it is referred to as NM Supreme Case No. 28,217 filed October 8, 2003.

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JURISDICTION

The original State District Court had no jurisdiction to continue with CV-94-10 due to a jurisdictional defect of both parties and subject matter over water issues without all property owners present; legal property owner David Derringer being willfully excluded from the original jurisdictionally defective trial in April, 1996, by unlawful violation of oath, Code of Judicial Conduct and violations of Rule 19 by Judge Fitch, and unlawful Motion in Limine from the Chapels meant to stop David Derringer's due process and deny legal opportunity to be heard over his affected lands and water issues that mandated his presence. The NM Court of Appeals had no jurisdiction over the jurisdictionally defective CV-94-10 due to a jurisdictional defect of both parties and subject matter over water issues without all property owners present in the underlying state Case CV-94-10, and should have remanded CV-94-10 to the Seventh Judicial District Court for dismissal on Constitutional grounds and lack of jurisdiction.

The NM Supreme Court, pursuant to Oath of judicial office, had jurisdiction in No. 28,173 and No. 28,217 to immediately stop the violations of the US Constitution 14th Amendment with the underlying state Case CV-94-10 Orders in violations of the US Constitution 14th Amendment, and to stop the original jurisdictionally defective Case CV-94-10 that had originally denied due process and opportunity to be heard, and had unlawfully deprived statutory rights guaranteed by the NM State Legislature in illegal "injunction" in Constitutional defect of both the US Constitution 14th Amendment and in violation of the New Mexico Constitution Article 2 Section 18, and in violation of the New Mexico Constitution Article 16 by the illegal Chapel dam of 14.3 feet that was at all times prohibited by the NM Constitution and all statutory provisions of NM Water Law statutes without the mandated permit and engineered design **before** construction.

The United States Supreme Court has jurisdiction to review

the New Mexico State Court of last resort, under US Supreme Court Rule 10(b), wherein the NM Supreme Court has continued an illegal attack on the United States Constitution to attempt to produce case laws that would allow a United States citizen to be deprived of 14th Amendment rights of due process and equal protection, to condone the "enslavement" of another with use of violations of state laws, and to deny and deprive guaranteed NM Statutory rights enacted by the Legislature to a United States citizen; violations of the foundation of America, the United States Constitution 13th and 14th Amendments.

1. The original case was filed in the Seventh Judicial District Court by Chapels in known abuse of process and malicious prosecution, and was illegally continued at all times in jurisdictional and Constitutional defect by Judge Fitch working in conspiracy with the Chapels.

2. The Petitioner appealed to the NM Court of Appeals when Judge Fitch violated his oath of office, violated the Code of Judicial Conduct, and attacked the United States of America when he not only continued with state Case CV-94-10 in jurisdictional defect without either his jurisdiction or judicial capacity, but Ordered criminal acts perpetrated upon the Defendant litigants and then Ordered a denial and deprivation of the 14th Amendment rights of due process, equal protection and Pro-Se self representation by an attack on the United States Constitution. All justices hence forth of NM Court of Appeals Judges Alarid, Fry, and Pickard, and the NM Supreme Court Justices violated all oaths and cooperated in the attack on the United States Constitution to deprive "future" due process, equal protection, self representation in a United States Court, and deprived guaranteed statutory rights in New Mexico as provided for by the NM Legislature. All justices thence also singled-out the Chapels not only to be able to violate NM laws with impunity, but to use those same violations to steal and deprive statutory rights from the

Nevitt/Derringers and to "enslave" the Nevitt/Derringers to the Chapel's own violations of state laws; all acts of justices without any jurisdiction or judicial capacity, and acts wherein their immediate dismissal from public service is mandated by the United States Constitution 14th Amendment Section 3.

3. The date on which the state Case originally defied due process and equal protection, denied 14th Amendment rights of necessary and indispensable property owner David Derringer, and proceeded with a state Case of CV-94-10 of known jurisdictional defect of both parties and subject matter was April, 22, 1996.

4. The date on which jurisdictionally defective state Case CV-94-10 illegally caused injunction to be set against real private property protected under Title 42 U.S.C. Section 1982, of which was outside the jurisdiction of the court, and without opportunity to be heard in denial of due process against property owner David Derringer, and which deprived the Nevitt/Derringer's statutory legal rights to stock ponds as provided and guaranteed by the NM Legislature was May 17, 1996.

5. The date on which the state Case CV-94-10 illegally attacked the United States of America with Orders to deprive and deny future 14th Amendment rights was January 28, 2003 and again on February 12, 2003.

6. An appeal of both the unconstitutional Orders denying due process and the illegal attorney fees "rewards" for this treason was timely filed in the NM Court of Appeals under Nos. 23,815 and 23,965 with accordingly timely Motions for Reconsideration filed pursuant to Rules 1-059 and Rule 1-060 and all appeals and Motions for Reconsideration were denied by the NM Court of Appeals.

7. Petitions for a Writ of Certiorari of both Appeals Nos. 23,815 and 23,965 were filed respectively under NM Supreme Court Nos. 28,173 and 28,217 and timely Motions for Reconsideration were

filed when the NM Supreme Court violated oath and continued the attack on the US Constitutional 14th Amendment and NM Constitution Article 2 Section 18 due process and equal protection rights of the CV-94-10 Defendants. All Motions for Reconsideration were denied, and Orders thus stand in the NM Supreme Court that deny all due process, equal protection, statutory rights, and rights for Pro-Se self representation against Susan Nevitt, David Derringer and Norma Nevitt, in a direct violation of the 13th and 14th Amendments of the United States and that deprive all rights, immunities, and privileges of the United States Constitution against the Nevitt/Derringers, and also allow the Chapels to be singled-out to violate all NM statutory and Constitutional laws with impunity, as well as the ability of the Chapels to have "enslaved" the Nevitt/Derringers and the Nevitt/Derringer real property to the Chapel violations of laws, perjury, fraud, and misrepresentations to courts of law.

8. This Petition for Certiorari is timely pursuant to the Rule 13 of the Rules of the United States Supreme Court.

For the reasons set forth herein, the NM Supreme Court's application is state action of tort law, mis-application of statutory laws, and denial of 14th Amendment rights to oppose this state action, and the collusion of a private actor mis-using "color of law", and because the Court was acting in violation of state laws and Constitutional laws; "acting under the color of law", this US Supreme Court has jurisdiction under Rule 10(b). **SEE**: New York Times Co. v. Sullivan, 376 US 254, 265 (1964) (finding that application of both statutory and common law constitutes state action for purposes of Constitutional violations).

♦

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution

provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourth Amendment to the United States Constitution provided:

> The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the ~~persons or things to be~~ seized.

The Eighth Amendment to the United States Constitution provided:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Ninth Amendment to the United States Constitution provided:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Thirteenth Amendment to the United States Constitution provided:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exists within the United States, or any place subject to their jurisdiction.

The Fourteenth Amendment Section 1 to the United States Constitution provided:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fourteenth Amendment Section 3 to the United States Constitution provided:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

The Nineteenth Amendment to the United States Constitution provided:

> The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

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STATEMENT OF PERTINENT FACTS WITH EXHIBITS, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW OF THE UNDERLYING JURISDICTIONALLY DEFECTIVE AND UNCONSTITUTIONAL STATE CASE CV-94-10

This underlying matter of NM state case CV-94-10 involved attorney Fitch already conducting fraud and proven forgery in 1992-1994 against the Nevitt/Derringer property for the neighbor Chapels when he represented Ray Eichner (Nevitt/Derringers' predecessor in title) and gave his clients land away to assist Chapels acquisition of same about May 11, 1994 in a Quit Claim Deed of which Fitch forged the signature of Ray Eichner to consummate the unethical land deal for the purchasing Chapels. **SEE**: Deposition of Ray Eichner of June 13, 1994 (**Exhibit 1, APPENDIX B**). Maxey v. Quintana, 84 N.M. 38, 499 P.2d 356 (Ct. App. 1972) "It is unnecessary even to use words such as "fraud" or "fraudulent" provided that the facts alleged are such as constitute fraud in themselves, or are facts from which fraud will be necessarily implied." On May 13,1994, two days later, Chapels filed suit against the Nevitt property with fraudulent use of a proven 14.3 foot statutorily violating dam[1] in malicious prosecution and fraud, to drive out the Nevitt/Derringer family so that the "racketeering" could continue in the remote canyon in which the Chapel/Fitch conspiracy was working. [Violations of RICO ACT Title 18 Section 1962] Chapels admitted to having a dam over 10 feet without permit, and thus were prosecuting in CV-94-10 "maliciously" with no title, since state laws NMSA 1978, 72-5-32 and 72-9-3 prohibit any dam over 10 feet without permit. Marchbanks v. Young, 139 P.2d 594, 47 N.M. 213 N.M. 1943 "In actions for malicious prosecution "malice" is understood to mean a wrong act done

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Mick Chapel admitted that his dam is over 14 feet without permit or the mandated engineered design before construction in his court testimony of June 14, 1994 and again in deposition of October 12, 1994, and admitted that he constructed the illegal dam in 1984. The New Mexico State Engineer confirmed the new Chapel dam at 14 feet in violation of state law in the OSE Memo Derringer v. Chapel on May 22, 1995.

intentionally without legal justification and may be inferred from lack of probable cause." Chapels were proven to have conducted fraud to the courts by Mick Chapel's testimony of June 14, 1994 (**Exhibit 2, APPENDIX B**) and in his deposition of October 12, 1994 (**Exhibit 3,APPENDIX B**), wherein he admitted to destruction of the prior Frank Armijo dam of Declaration #02311 and construction of the illegal 14.3 foot dam in 1984. The state engineer confirmed this illegal Chapel fraud of a dam at 14 feet in the OSE Derringer v. Chapel Memo May 22, 1995, (**Exhibit 4, APPENDIX B**) and the State Engineer confirmed with the OSE Memo. of April 4, 1996 (**Exhibit 5, APPENDIX B**) and again with the OSE Memo. of June 19, 1996 (**Exhibit 6, APPENDIX B**) that Chapels had no claim to pre-1907 public water by using the extinct Frank Armijo Declaration #02311. Chapel and "then" Judge Fitch teamed up to defraud the courts in the jurisdictionally defective trial of April, 1996 with "Question #1"[2] to dupe the jury into believing the Chapels' illegal 14.3 foot dam was still the original Frank Armijo dam that Chapels already had admitted to destruction of in 1984. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951) "Illegal use of public waters does not create any right to continue use since statutory manner for securing right to use public waters is exclusive". Judge Fitch maliciously violated Rule 19, and the Code of Judicial Conduct Canon 3 (B)(2)(5)(7) to keep out David Derringer, deeded necessary and indispensable property owner ~~from~~ September 11, 1995, (9 months prior to the April trial of CV-94-10), (**Exhibit 7, APPENDIX B**) to consummate the Chapels' fraud, and continued to the trial in jurisdictional defect denying due process

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"Did Frank Armijo construct a dam on the Chapel property which did not exceed 10 feet in height and did not impound more than 10 acre feet of water?"

under the US Constitution 14th Amendment, and Chapels had filed a Motion in Limine to keep out David Derringer. Walker v. Hastings, 79 N.M. 338, 443 P.2d 508 (Ct. App. 1968) "Where necessary parties are not before the Court in a timely manner for all pleadings there is nothing to be done but to dismiss the suit". ; Sellman v. Haddock, 62 N.M. 391, 310 P.2d 1045 (1957) "Objection that indispensable party was absent from case may be made, if not before, in supreme court." Thus, the illegal, unconstitutional and jurisdictionally defective "Judgement and Injunction of May 17, 1996" (**Exhibit 8, APPENDIX B**), that ensued, shows clearly that deeded property owner David Derringer was illegally kept out of the litigation, and thus this Judgement and unconstitutional Injunction was not legally binding on David Derringer or his real property as he was a **NON-PARTY** that was deprived his Constitutional 14th Amendment rights of due process. This illegally "seized" his legal stock ponds in violation of the 4th Amendment. [SEE: Montoya v. Blackhurst, 84 N.M. 91, 500 P.2d 176 (1972); Sena v. Montoya, 346 F.Supp. 5 (D.N.M. 1972); Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L.Ed.2d 556 (1972) pre-judgement seizure of property without opportunity to be heard is unconstitutional.]; Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action." Therefore, there is no "res judicata" by use of the jurisdictionally defective "Judgement and Injunction of May 17, 1996" that could ever bind or control the Derringer real property of which David Derringer, due to his illegal exclusion from the opportunity to be heard prior to that decision, since Judge Fitch deliberately kept him out as a **NON-PARTY** to the underlying action of which he was both necessary and indispensable, yet denied and deprived 14th Amendment rights for opportunity to be heard; Fitch working outside of

jurisdiction and judicial capacity. "The application of the doctrine of ~~res judicata~~ or "claim preclusion" depends upon identity of prior and subsequent actions in four respects. (1) parties or privies, (2) capacity of character of persons for or against whom the claim is made, (3) cause of action, and (4) subject matter." Three Rivers Land Co. v. Maddoux, 98 N.M. 690, 652 P.2d 240 (1982). ; Three Rivers Land Co. v. Maddoux, 98 N.M. 690, 652 P.2d 240 (1982) "The requirement of res judicata that a party be in the same or similar legal capacity in a suit relates to the fundamental precept that a person cannot be bound by a judgement unless he has had reasonable notice of the claim against him and an opportunity to be heard in opposition to that claim." Since David Derringer was deprived 14th Amendment rights before the Judgement and Injunction of May 17, 1996 without opportunity to be heard in opposition to that claim of Chapels, and since David Derringer owned the affected property 9 months prior to the trial of that action, the Derringer property could not be bound by that jurisdictionally defective judgement, and the proven legal, historical, and statutory compliant stock ponds on the private Derringer property could not be statutorily denied by an Injunction that takes clearly established rights, privileges and immunities for stock pond ownership and use by the mandates and guarantees of the state legislature under 72-5-32 and 72-9-3. [equal protection] Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "**shall be subject to like punishment, pains, and penalties, and to none other**, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding." Accordingly, also, the documents clearly prove (Exhibits 1-6) that the Chapels knew they were in violation of state laws to bring this action, and Judge Fitch also knew by both conspiracy with the Chapels and the court record that Chapels had an illegal dam that they were using in violation of law to "enslave" the Nevitt/Derringers and take their statutory rights in perjury and fraud.

Hedrick v. Perry, 102 F.2d 802 "The existence of a conspiracy is generally a matter of inference deduced from acts and declarations of parties." This violates the 13th Amendment.

With the jurisdictionally defective Judgement and Injunction of May 17, 1996, Respondents Chapels and Judge Fitch ruined the goat raising business of the Petitioner by unconstitutionally depriving legal stock pond waters provided to the Petitioner under laws NMSA 1997, 72-5-32, 72-9-3 and the New Mexico Sheep and Goat Act of 77-8A-1. State Bank v. McNew, 33 N.M. 414, 269 P.56 (1928) "Use of water for domestic purposes, including stock watering is "beneficial use" of water". ; Frank Bond & Son of Reserve Minerals Corp. 65 N.M. 257, 335 P.2d 858 (1959) **"Wrongful removal of water from stock tanks.** Trial court's submission to jury of question of damages based upon market value of water taken and damage to appellee's stock-raising activities, in action for wrongful removal of water from stock-tanks, was not error."; Millheiser v. Long, 10 N.M. 99, 61 P.111 (1900). "Private ownership of water in public streams was prohibited, and a right to use of waters for beneficial purposes was given to those who appropriated and applied them to such uses." Judge Fitch had violated oath to violate the NM Constitution Article 16 and violate NMSA 1978, 72-5-39 to allow Respondents Chapels to use a 14.3 foot unlawful dam in violation of 72-5-32 and 72-9-3 to cause "wrongful injunction" against the Derringer property against rights of equal protection, to take the Derringer statutory rights to have legal stock ponds, and "enslaved" the Derringer property by use of proven violations of law in degradation of the 13th Amendment, without any Constitutional jurisdiction, without any party or subject matter jurisdiction, and without any jurisdiction over the private Derringer real property. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly

convicted, shall exist within the United States, or any place subject to their jurisdiction." ; Lueker v. First National Bank of Boston 82 F.3d 334 "Injunction is "wrongful", where Plaintiffs had no just right either in law or facts to request or obtain such remedy." ; State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951): "The statutory manner of securing rights to use water for irrigation is exclusive, and no right to use of water is obtained by use in violation of the statutes."; Little v. Price, 74 N.M. 626, 397 P. 2d. 15 (1964) "Defendant who built a dam without obtaining the permit required hereunder (NMSA 1978, 72-5-1)...was liable for damage".

In the year 2000, Chapels again came to their co-conspirator Judge Fitch to re-open defective state Case CV-94-10 in additional fraud and malicious prosecution, when they had deliberately backed water in criminal trespass onto the upstream Derringer property and then claimed "impoundment" of their waters by Derringer in fraud. Groff v. Circle K. Corp., 531 N.M. 525 p.2d 891, 86 Evidence that landowner raised the grade of its land above that of adjoining property..and that such construction caused the surface water to drain onto the adjoining property..to cause damage..was sufficient to impose such liability for conduct. This criminal conduct of the Chapels was possible since the illegal 14.3 foot dam made the dam higher than the upstream property of Derringer. **(Exhibit 9, APPENDIX B)** Archuleta v. Jacquez, 254 N.M. 704 P.2d 1130, 103 "Once Court had found trespass, it had discretion to apply equitable remedies to prevent continuing water damage to landowner's land from water from adjacent landowner's land." David Derringer, that had been foreclosed due process in the trial of April, 1996 came forth to collaterally attack the illegal Judgement and Injunction of May 17, 1996 of which he was **NON-PARTY**. **(Exhibit 8, APPENDIX B)** Judge Fitch again denied 14th Amendment rights to be heard against this illegal prior unconstitutional Judgement of CV-94-10, and violated Rule 19 again

to deny Derringer's legal entry to collaterally attack a Judgement that he could not be bound to, and unlawfully bound and subjected Derringer to the prior Judgement and Injunction of May 17, 1996 of which he was a **NON-PARTY**. Allen v. McClellan, 77 N.M. 801, 427 P.2d 677 (1967) "No court can make a decree which will bind anyone but a party; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen." Property owner Derringer had the right to stop and overturn the jurisdictionally defective Judgement and Injunction of May 17, 1996 of which had caused unconstitutional Injunction upon his legal lands and statutorily compliant stock ponds, and deprived statutory rights to legal stock ponds provided for by Legislature, due to lack of jurisdiction over parties, subject matter, and private property by Judge Fitch and Chapels. Chavez v. County of Valencia, 86 N.M. 205, 521 P.2d 1154 (1974) "Attack on subject-matter jurisdiction may be made at any time in the proceedings. It may be made by a collateral attack in the same or other proceedings long after the judgement has been entered."; Wisdom v. Kopel, 95 N.M. 513, 623, P.2d 1027 (Ct. App. 1981) "Jurisdictional issue may be raised in collateral attack after the judgement has been entered." The trial of CV-94-10 could not have occurred without Judge Fitch working outside of jurisdiction and judicial capacity, and in cahoots with the Chapels' known fraud of their illegal 14.3 foot dam, and CV-94-10 could not ever have been re-opened due to original jurisdictional defect. US v. Pedreza 27 F.3d 1515 cert denied 115 Supreme Court 347, 513 US 941 130 L.Ed.2d 303 cert denied "Elements of conspiracy are agreement with another person to violate law, knowledge of essential objectives of conspiracy, knowing and voluntary involvement, and interdependence among alleged co-conspirators."; Montoya v. Department of Finance & Administration, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982)"the non-joinder of a

party will result in the dismissal of a cause of action, where the party's absence will prevent the court from granting complete relief, significantly impair the interests of the absent party or expose litigants to possible multiple liability or inconsistent obligations."; Romero v. Felter, 83 N.M. 736, 497 p.2d 738 (1972) "All parties are not identical, and all parties need to be correctly represented before the Courts". Judge Fitch re-opened CV-94-10 for the Chapels already proven illegal dam fraud, illegally bound other property owner David Derringer to the jurisdictionally defective Judgement and Injunction of May 17, 1996 of which he was **NON-PARTY** and had no opportunity to be heard, in order to aid the Chapels running out of County Derringer by illegal use of their statutorily violating dam as a "vehicle", Chapels using Judge Fitch to assist the persecution of Derringer, and to file fines and damages against the legal ownership and use of statutorily guaranteed stock ponds on Derringer's private property outside of the Chapel/Fitch's jurisdiction and judicial capacity by the provisions of the Private Property Act of Title 42 U.S.C. Section 1982 for private real and personal property ownership.

Judge Fitch was illegally on CV-94-10, due to the mandated prior recusal for cause, and ignored new party Derringer's motions to recuse him for cause of bias, prejudice and pecuniary interest in the property, and "enslaved" the Defendants to his court for the benefit of Chapel's control of the litigation. DB v. Ocean Tp. Bd. of Education, 985 F. Supp. 457, affirmed 159 F.3d 1350 "DNJ 1997 If through obduracy, honest mistake, or simply inability to attain self knowledge judge fails to acknowledge disqualifying predisposition or circumstance, appellate court must order recusal no matter what the source; litigants ought not have to face judge with respect to whom there is reasonable question as to impartiality." ; A. Borrego v. El Guique Community Ditch Assoc., 107 N.M. 594, 762 P.2d 256 (1988) "A judge has no jurisdiction after having been disqualified."

All Defendants of CV-94-10 were denied due process in a fair and equitable court. State ex rel Anaya v. Scarborough, 75 N.M. 702, 410 P.2d 732 (1966) "Requiring petitioner to stand trial before biased or prejudiced judge does not conform to adequate remedy." All Defendants again proved the Chapel dam 14.3 feet in violation of state laws, and not the extinct Frank Armijo dam of Declaration #02311, by the Hydroscience Assoc. Hydrology study of February 12, 1999 **(Exhibit 10, APPENDIX B)**, the GPS survey of June 20, 2001 **(Exhibit 11, APPENDIX B)**, and the Geoconsult PHD Alan Kuhn Engineer/Hydrologist study of June 29, 2001 **(Exhibit 9, APPENDIX B)**, that also proved the Chapels backing water in criminal trespass upon the Derringer property in their fraudulent claim that Derringer "impounded" water. THE LEGISLATURE OF THE STATE OF NEW MEXICO 43rd Legislature, 1st Session Laws 1997 Chapter 66 House Bill 36, as amended section 72-5-32 NMSA 1978 (being laws 1941, Chapter 126, Section 25, as amended) is amended to read: "72-5-32. Construction of dams exceeding ten feet in height,..any person, association or corporation, public or private, the state or the United States hereafter intending to construct a dam shall meet the requirements of filing application for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978." Judge Fitch ignored the surveys of the Chapel dam in statutory violation, ignored the criminal trespass and granted Chapels additional damages against the legal stock ponds of Derringer in violation of due process of law and intimidated and disrupted Susan Nevitt's attempt to represent herself in the trial of July 6, 2001 by Fitch conducting sexual harassment against her in the courtroom. In re Hey, 193 W. Va. 572, 457 S.E.2d 509 (1995) "Sexual harassment is a proscribed judicial activity."; In re Doe, 519 P.2d 133, 86 N.M. 37 "N.M. App. 1974 Failure to hear one party's evidence, when offered, establishes a presumption of prejudice." Fitch did these acts to protect the

Chapels from the mandated $250 per day fines, and 6 month jail for "Each day of continued violation shall constitute a separate offense" of violations of each statute of water law pursuant to NMSA 1978, 72-8-4, 72-8-6, and 72-12-11 due to the illegal Chapel 14.3 foot dam. In violation of the 14th Amendment, Judge Fitch placed additional damages against the legal stock ponds of Derringer, of which he had no jurisdiction or judicial capacity over the private property, and of which "punished" Derringer for legal ownership of private structures not in the jurisdiction of Fitch. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 (1968) No. 645 "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. Congress provided that the right to real and personal property was to be enjoyed equally throughout the United States, and that right was to be secured against interference from any source whatever, whether governmental or private." Judge Fitch then ordered the destruction and removal of the legal dams and Derringer stock ponds of which he had no jurisdiction and which were guaranteed to Derringer under "equal protection" pursuant to statutes 72-5-32 and 72-9-3 as well as the Private Property Act.City of Memphis v. Greene, Tenn. 1981 101 S. Court 1584, 451 US 100, 67 L.Ed.2d 769 rehearing denied 101 S. Ct. 3100, 452 US 955, 69 L.Ed.2d 965 "Private Individuals-This section [Title 42 U.S.C. Section 1982] guaranteeing all citizens of the US the same right as is enjoyed by white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property is directly applicable to private parties." Judge Fitch, without jurisdiction or judicial capacity, ordered the destruction and removal of the Derringer private property only roads of necessity access to his home across Harris creek and into forest; a water crossing of necessity by the short 5 foot dams created by the legal stock ponds. McGowin Invest. Co v. Johnstone (1974) 54

Ala App 194, 306 So 2d 286 ; State ex rel Carlson v Superior Court for Kitsap County (1919) 107 Wash 228, 181 P. 689, "The Court held that a landowner who already enjoyed an existing way of necessity over the lands **was to be held**." Fitch had no jurisdiction over the private roads located upon the lands of Derringer, and ordered these roads destroyed to render the lands "uninhabitable", so as to drive out Derringer from residence for the Chapels. Twin Caney Watershed Joint Dist. V. Emit J. Carra Ks Court of Appeals No. 50326 "It was held that landowner is entitled to road if water is of sufficient quantity and character as to preclude him from reasonable access. **The existence of a river, stream or similar body of water obstructing the access to property the Court held: "that was sufficient necessity that existed for establishment of ways of necessity"**. Judge Fitch did this illegal order outside of all jurisdiction and judicial capacity to stop all needed necessities of life on Derringer's property; food, water, propane for heat, electricity, "computer access for litigation", shelter, livestock food transportation, and other needed access for emergencies and medical. **(Exhibit 12, APPENDIX B)**. Higginson v. Wstergard Id 604 P.2d 51 "An action to compel property owner to remove dike allegedly interfering with flow of river adjacent to his property, **the Court held that the property owner did not violate the terms of his streambed**." ; Ind-Ritchey v. Welsh (1898) 149 Ind 214, 48 NE 1031; Ky-Roland v. O'Neal (1909), Ky 122 SW 827; Bentley v. Hampton (1906) 28 Ky LR 1083, 91 SW 266; Mich-Douglas v. Jordan (1925) 232 Mich 283, 205 NW 52, 41 ALR 1437; Miss-Quin v. Sabine (1938) 183 Miss 375, 183 So 701; NY-Hines v. Hamburger (1897) 140 App Div 577, 43 NYS 977; Tex-Missouri K.T.R. Cov. Cunningham (1925, Tex Civ. App) 273 SW 697; Parker v Bains (1946) Tex Civ App 194 SW 2d 569. "The Courts stated that once a way of necessity has been located, the location becomes "fixed" and **cannot be relocated**

without the consent of the owners". The Derringer stock ponds are historically documented for over 50 years on the USGS Map Gallo Mts. East Quadrangle (**Exhibit 13, APPENDIX B**), are surveyed to be "under 10 feet" in statutory compliance with the GPS survey of June 20, 2001 (**Exhibit 14, APPENDIX B**), documented by Chapels surveyor Douglas McLeod to be under 10 feet impounding less than 10 acre feet in statutory compliance (**Exhibit 15, APPENDIX B**), and witnessed and photographed by Chapel's attorney Joseph Manges to be in statutory compliance of under 10 feet (**Exhibit 16, APPENDIX B**); clearly outside of the jurisdiction of Chapels and Judge Fitch, who have no monetary, contractual, or proprietary interest in the Derringer property that renders these legal stock ponds outside their jurisdiction by Title 42 U.S.C. Section 1982. When this Order was appealed, Judge Fitch ordered Lisa Arnold (deputy clerk) not to send the court record of CV-94-10 to the appellate court, and to not allow Derringer to pay for the court record to obstruct the appeal to assist Chapels. US v. Andreas, 39 F. Supp.2d 1048 ND Ill. 1998 "Obstruction of justice statute is construed broadly to include the various corrupt methods by which the proper administration of justice may be impeded or thwarted; variety limited only by the imagination of the criminally inclined." 18 USCA 1503

To stop litigation, Chapels and Judge Fitch attacked Derringer with stalking, aggravated assault, shooting at an occupied dwelling (New Mexico State Police Report USP1100), killing the livestock and pets, and other domestic terrorism to include the recent stealing of all goat livestock from Derringers. U.S. v. Bowman, 173 F.3d 595 "CA6 (Ohio) 1999 Court will narrowly construe obstruction of justice statute to ensure that proper notice of unlawfulness of activity and reach of statute is given to public." Chapels re-opened defective CV-94-10 in August, 2002 in additional fraud, abuse of process and malicious prosecution. Due to the Chapels failing to timely respond to

the Counterclaim of September, 2002, Judge Fitch dismissed the Counterclaim to protect the Chapels, and then himself did personal harassment of Derringer and his family with intimidation, death threats, stalking, phone harassment, and other egregious acts outside and in the courtroom to dissuade the Defendants from continuing to "whistleblow"[3] on the NM Court public corruption, and to dissuade continuation of litigation against the Chapel fraud. US v. Baum, 32 F. Supp.2d 642 "SCNY 1999 Obstruction statute is intended to prevent the obstruction of the administration of justice in any court of the United States, corruptly by threats of force." 18 USCA 1503(a).

Judge Fitch defiled the NM Constitution Article 16 by knowingly allowing the Chapels to have a dam in continuous statutory violation, and as Derringer continues to litigate Pro-Se, that uncovers the conspiracy of fraud and perjury, based upon actions of public corruption of Judge Fitch in racketeering with the Chapels, Fitch realizes that he cannot protect the law violations of Chapels without stopping the litigation against them. Chapels' attorney Manges files a motion to deprive all further 14th Amendment Constitutional rights against the Defendants to stop the litigation against the Chapels, and Judge Fitch violates his oath to Order this attack on the 14th Amendment to not only protect Chapels, but to protect himself from then filed Civil Rights federal suits. Judge Fitch had sworn to God under oath that he would honor the US Constitution, and the Constitution and laws of New Mexico.[4] Chapels and Judge Fitch

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Derringer is protected by federal law of the Whistleblowing Protection Act of 1989 when they litigate disclosure of public corruption in the judicial system. Many "complaints" to judicial standards were also ignored.

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"I, Judge Thomas Fitch, do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the State

combined to both attack and deprive rights from Derringer to "obstruct justice". Judge Fitch and Chapels intimidated and threatened death to Derringer and his family with a personal attack of domestic terrorism, phone harassment, sexual harassment to Susan Nevitt, and violation of rights, in criminal attempts to get Derringer to stop the legal litigation against Chapels' fraud and to force Derringer to "back down", and them simply violated his oath of office and attacked the United States Constitution 14th Amendment, with "orders" to deprive future litigation to Derringer. Fitch has conducted these egregious acts to stop the litigation against the Chapels in order to protect them and their fraudulent 14.3 foot illegal dam and unlawful use thereof, and to "enslave" the Defendants of CV-94-10 to the Chapels and to Judge Fitch's courtroom. After Derringer filed federal suits against Fitch[5], Fitch used his personal attacks, and attacks against Derringer's property as also a means to stop the litigation against himself in federal court; Fitch violating the 8th Amendment with illegal fines and unusual punishment against legal property in order to ruin Derringer's life.[6] In re Rochkind, 128 B.R. 520 Mich. 1991 "To use power of

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of New Mexico, and that I will faithfully and impartially discharge the duties of the office of District Judge of the Seventh Judicial District Court on which I am about to enter, to the best of my ability SO HELP ME GOD."

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Due to other violations, and Constitutional deprivations, David Derringer has filed federal suits against Fitch David Derringer v. Judge Fitch et al CIV-02-0974, and David Derringer v. Thomas Fitch CIV-03-0149 and David Derringer v. Thomas Fitch et al CIV-03-0804.

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Chapels have been documented in drug trafficking, poaching, illegal sales of black market animal parts, and illegal importation of AK-47 rifles in the remote canon of Harris Creek, wherein the only properties were owned by the Petitioner and the Chapels. The Chapels have terrorized the Petitioner

public office as judge to ruin another for personal gain plainly violates several provisions of the Code of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5."

When Judge Fitch called Petitioner, Susan Nevitt, from a pay phone on January 4, 2003 [7] and threatened Derringer's life with murder in the Catron County jail, upon the planned illegal incarceration by Fitch under the guise of "contempt of court", Judge Fitch planned to stop all CV-94-10 Defendants from appearing at the trial for Chapels on January 16, 2003, and he succeeded in intimidating Susan Nevitt, and her mother, Norma Nevitt, (violations of Title 18 U.S.C. Section 1512) to be too afraid to appear before Chapels and Fitch. US v. Baum, 32 F. Supp.2d 642 "SCNY 1999 Obstruction statute is intended to prevent the obstruction of the administration of justice in any court of the United States, corruptly by threats of force." 18 USCA 1503(a).; U.S. v. Elwell, C.A. 1 (Mass.) 1993 984 F.2d 1289 cert denied 113 S. Ct. 2429, 508 US 945, 124 L.Ed.2d 650 "Telephone conversations were replete with statements that could reasonably have found to be both intimidating in

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for 9 years including aggravated assault, shooting at the occupied dwelling of the Petitioner, killing her pets and livestock, criminal trespass, criminal stalking, and death threats and other domestic terrorism. NM State Police Report NMUSP1100. Fitch is a co-conspirator with the Chapels in attempts to drive out the Petitioner so that all criminal acts can go on unimpeded.

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Judge Fitch admits in open court that the allegation of Susan Nevitt is that he personally made the death threat phone call on January 4, 2003. Audio record of open court CV-94-10 January 16, 2003. *Judge Fitch: "But there was a suggestion that the court, the judge, myself, had sexually harassed Ms. Nevitt, and there was a more recent allegation that I made a telephone call to her."* Phone call of Respondent Fitch to Susan Nevitt: "David's going to be jailed after the hearing. He won't make it out alive. Have you ever smelled burning flesh Susan?"

both nature and intent." David Derringer still appeared to represent himself, and Judge Fitch unlawfully used his courtroom with Chapels for attempts to "depose" David Derringer over the federal Complaint of sexual harassment and phone harassment Susan Nevitt had in federal court CIV-02-1580. The audio tapes of the CV-94-10 hearing on January 16, 2003 clearly establish, that "Judge" Fitch mis-used his power to intimidate Susan Nevitt's witness to Fitch's sexual harassment, (David Derringer) by use of his open court in violation of all Rules to illegally attempt to obtain information about federal Case CIV-02-1580 of which Fitch is a Defendant. U.S. v. Cuesta, C.A. 5 (Fla.) 1979 597 F.2d 903 cert denied 100 S. Ct. 451, 444 US 964, 62 L.Ed.2d 377 cert denied 100 S.Ct. 452, 444 US 964, 62 L.Ed.2d 377 "with conspiracy to obstruct justice, one aspect of the conspiracy charged was a plan to murder a person who was providing information, so long as the evidence showed that the prospective murder victim was a source of the information."; U.S. v. Brenson, 104 F.3d 1267, rehearing denied 113 F.3d 1253, cert. denied 118 Supreme Court 214, 139 L.Ed.2d 148 "Federal obstruction-of-justice stature reaches all corrupt conduct capable of producing effect that prevents justice from being duly administered, regardless of the means employed. 18 U.CA 1503." On December 19, 2002 Judge Fitch had attorney Sean Olivas represent him in CIV-02-1580, and thus, pursuant to F. LR 83.5 Judge Fitch could not represent himself in any matter regarding CIV-02-1580 including "questioning" a witness to his crime. Judge Fitch established that Norma Nevitt and Susan Nevitt were not present in the courtroom, and Judge Fitch attempted to intimidate "witness" David Derringer for his and Chapel's benefit. U.S. v. Muhammad, 120 F.3d 688 "CA7 (Ill.) 1997 Defendant who "intends" i.e. corruptly endeavors, to obstruct justice remain culpable even though his plan is thwarted." ; F. LR 83.5 "A party who is represented by an attorney may not personally ...represent himself or

herself unless otherwise ordered". Chapels and Fitch used the trial to dissuade David Derringer from continuing with the ongoing litigation against Chapels. U.S. v. Wilson, C.A. 4 (W. Va.) 1986 796 F.2d 55, on remand 640 F. Supp. 238 cert denied 107 S. Ct. 896, 479 US 1039, 93 L.Ed.2d 848 "Statute proscribing harassment (Title 18 U.S.C. Section 1512) is not limited to conduct that actually dissuades testimony, and the success of an attempt to do so or the possibility thereof is irrelevant." This was also ex-parte communication in violation of Rule 16-402 from Fitch in the absence of the Plaintiff Susan Nevitt and was meant for intimidation. In re Starcher, 193 W.Va. 470, 457 S.E.2d 147 (1995) This clearly violated **federal law**, Code of Judicial Conduct Canon 1-3, 4(A)(1)(2)(3), 5, 6, and mis-use of power and authority of a Judge without jurisdiction or judicial capacity to violate federal Rules; illegal and continual "personal" and "extra-judicial" mis-use of power without jurisdiction or judicial capacity. In re Vandlinde, 179 W. Va. 183, 366 S.E.2d 631 (1988).; US v. Risken, 788 F.2d 1361 cert denied107 Supreme Court 329, 479 US 923, 93 L.Ed.2d 302 "18USCA 1512, which prohibits any party from intimidating or harassing another party in order to influence testimony at official proceeding, does not require that party harassed or intimidated be witness at proceeding."

Since the terrorism and intimidation from both Chapels and Judge Fitch did not stop the **legal** Pro-Se representation from Derringer, upon Chapels' motion to deprive 14th Amendment rights, Judge Fitch violated his oath, Code of Judicial Conduct and deprived the rights of due process and equal protection of the US Constitution 14th Amendment, and "enslave" Derringer to his court in violation of the 13th Amendment; Ordering Derringer to "ask Fitch" whether he could have due process at any time; clearly a totalitarian dictatorship controlled by Fitch without Constitutional jurisdiction to control future litigation. **(Exhibits 17, APPENDIX B)** Jones v. Mayer Co., U.S.

Supreme Court 392 U.S. 409 No. 645 (1968) "Neither slavery nor involuntary servitude..".

The Chapel/Fitch conspiracy used the public corruption of Judge Fitch to stop litigation against Chapels and at the same time stop the federal litigation against Fitch, by Fitch mis-use of power to "order" the Defendants of CV-94-10 to stop litigation or threatening to throw them in jail for contempt, denying Derringer's rights to "file complaints, motions, pleadings, discovery requests, or other papers",and "ordering" no available Pro-Se representation. Stump v. Sparkman, 435 U.S. 349 (1978) "A judge will be subject to liability when he has acted in the clear absence of all jurisdiction." Judge Fitch had always refused to recuse as mandated by Rule 1-088.1(D) and ordered Derringer to have to have the "prior approval of the court" to have due process, and thus Derringer had no ability to escape to a fair or equitable court or judge. US v. Griffin, 84 F.3d 820 amended CA7 (Ill.) 1996 "Judge should be disqualified from proceeding where circumstances raise reasonable questions about his or her impartiality, regardless of his or her state of mind or ability to conduct fair and impartial trial." ; US Citizen. State v. Marden, 673 A.2d 1304 Me. 1996 "No judge should preside in case in which he is not wholly free, disinterested, impartial and independent."; Purpura v. Purpura, 847 P.2d 314, 115 N.M.80 cert denied 847 P.2d 313, 115 N.M. 79 "N.M. Ct. of Appeals 1993 "If judge becomes so embroiled in controversy that he or she is unable to make fair and objective decision, judge must recuse himself or herself. SCRA 1986 1-011, SCRA 1986, Canons 21-300 Subd. A(3) 21-400"; Petition of Wittrock, 649 A.2d 1053 (Del.) Supra. 1994 "Every litigant is entitled to be heard by a disinterested judge."

Judge Fitch entered the unconstitutional Decision and Order on January 28, 2003 and February 12, 2003 (**Exhibits 17, APPENDIX B**) for Chapels, and in an attempt to set New Mexico

Case laws against the rights of US citizens to have equal protection, due process and self representation in the courts of the United States. This is treason against the United States of America that mandates Fitch's immediate removal from public office under the 14th Amendment Section 3. Fitch also attempted to mis-use his powers without jurisdiction or judicial capacity to assist Chapels to defy and deprive US Constitutional rights, and to mis-use his powers to "order" a stop to the federal litigation against himself. [page 1 "order"- "*Indeed, another suit not listed in the motion was filed recently by Susan Nevitt in the federal court*". This directly references Susan Nevitt v. Judge Fitch Federal Case CIV-02-1580. Judge Fitch then assisted the crimes of Chapels to attack Derringer by ordering criminal trespass and destruction of the Derringer property in violations of Title 18 U.S.C. Section 373 to incite violence and harm against Derringer when or if he exercises his NM Constitutional Article 2 Section 4 rights to defend their legal property, and to protect assets in violation of the 9th Amendment. Chapels and Fitch have done criminal acts of domestic terrorism, death threats, plans of murder, falsification of the court records, obstruction of justice, plans of physical violence, Orders of criminal trespass and criminal destruction of property, and Chapels have used the position of Judge Fitch to work in total violation of statutes, Rules, and the violation of the Code of Judicial Conduct Canon 3 (B)(2)(5)(7)(D)(1), to "Order" the criminal trespass and criminal destruction of legal, historical and legal and mandated only access road to the Nevitt/Derringer property and home constituting a direct criminal felony by Chapels and Judge Fitch under NMSA 1978, 30-28-1 and NMSA 1979, 30-28-2. Judge Fitch worked outside of jurisdiction and judicial capacity both in and outside of the courtroom to intimidate and threaten Susan Nevitt not to campaign or post flyers against his re-election in violation of the 1st and 19th Amendments, meant to help Chapels obstruct justice. US v. Baum, 32 F. Supp.2d

642 "SCNY 1999 Obstruction statute is intended to prevent the obstruction of the administration of justice in any court of the United States, corruptly by threats of force." 18 USCA 1503(a). Chapels asked to have Derringer illegal jailed in the hearing of January 16, 2003 to accomplish the murder threat of January 4, 2003. This was meant to protect the Chapel fraud and to stop further litigation in a conspiracy for "obstruction of justice by force and intimidation", and to stop further litigation that was "whistleblowing" on racketeering and public corruption in the New Mexico Courts. [Chapels' dam is still in proven statutory violation by the GPS survey of 6-21-2001; a clear violation of the NM Constitution Article 16 punishable by 72-8-4, 72-8-6 and 72-12-11 providing damages against Chapels for $250.00 per day and 6 months of jail for each day of violation (1984 until the present)] U.S. v. Maggitt, C.A. 5 (Miss.) 1986 784 F.2d 590 "It is endeavor to bring about forbidden result, and not success in actually achieving result that is forbidden; however, whether threat had reasonable tendency to influence witness is relevant in determining accused state of mind."

Chapels are clearly using Judge Fitch in cahoots with them to act out a conspiracy against rights with the Chapels in violations of laws to illegally punish Derringer with monetary damages and illegal injunctions against legal, private stock ponds on the real property outside of any legal jurisdiction with use of the Chapel fraud in violation of Title 42 Section 1982. SEE: C. Wright, A. Miller, & M. Kane Federal Practice and Procedure 2860 (2nd ed. 1995) The Petitioner's proof of Chapels' fraud is in Appendix B, and has continually involved Chapels and their attorney's (Joseph Manges) and Fitch's violations of 14th Amendments and violation of "equal protection" to deprive legal stock ponds to the Nevitt/Derringers, persecute them, intimidate and create domestic terrorism and force them from Catron County. Chapels used unethical Joseph Manges and

Judge Fitch to resort to orders to deprive due process as a means to stop any legal defense of the Chapel's fraud. Now Justices of New Mexico, including the NM Supreme Court continually work outside of jurisdiction and judicial capacity to continue to penalize, allow malicious prosecution, and now affirm orders of no further Constitutional rights for Derringer in an unbelievable display of dictatorship and attack on America prohibited by both the oaths of office and the Code of Judicial Conduct. Collins v. City of Harker Heights, Tex. 112 Supreme Court 1061, 503 US 115, 117 L.Ed.2d 261 "US Tex. 1992 First Amendment, equal protection and due process clauses of Fourteenth Amendment, and other provisicns of Federal Constitution afford protection to those who serve government as well as those who are served by them, and 1983 provides cause of action for all citizens injured by abridgement of those protections. USCA Const. Amends. 1, 14; 42 USCA 1983." It is the Respondents Chapels' use of conspiracy and now judicial mis-use of power in corruption that criminally controls and ruins the life of the Petitioner by the continual illegal and unconstitutional use of Chapel's illegal dam and the jurisdictionally defective Judgement and Injunction of May 17, 1996, to violate the laws with now orders not to allow 14th Amendment rights to litigate against this fraud.

♦

REASONS FOR GRANTING THE PETITION

The New Mexico Supreme Court has illegally and unconstitutionally granted the Chapels a right to be singled-out to continually violate state laws and to use those violations to enslave Derringer, and to keep Derringer from litigating against this fraud, perjury and violations of equal protection, by ordering Derringer to have no further or future constitutional rights in the United States of America under the 13th and 14th Amendments. Therefore, Chapels with the unethical justices have set case laws against an American to have

no rights under constitution. The NM Supreme Court has affirmed that Derringer can be persecuted for legal ownership of statutory compliant stock ponds afforded him by the Legislature, and can be fined or jailed for real property ownership outside of the jurisdiction of the Chapels or the Courts. The NM Supreme Court has affirmed that Chapels and Fitch can order and perpetrate criminal acts against Derringer to force submission to this fraud, and can destroy Derringer's legal private property, rendering the Constitution, the private property act of Title 42 Section 1981(a) and Title 42 Section 1982, and all criminal laws moot. Orders against the 14th Amendment accordingly also illegally protect all of these conspirators, within the meaning of Title 18 Section 241, from a Civil Rights 1983 action.

The Constitution is America and prevents, by the 14th Amendment Section 3, any Judicial immunity when attack is made against the Constitution. Canon: "Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us."A quote from U.S. Supreme Court Justice Tom C. Clark in *MAPP v. OHIO*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (June 19, 1961), as follows: "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its ***disregard*** of the charter of its own existence. As Mr. Justice Brandeis, dissenting, said in *Olmstead v. United States*, 277 U.S. 438, 485 (1928): "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."" (***Emphasis added***).; Scheuer v. Rhodes, 416 US 232, 241 (1974) "the public interest requires decisions and action to enforce laws for the protection of the public."

CONCLUSION

Chapels have violated all laws, and violated all Constitutional provisions to "enslave" Derringer, take all rights and attach and attack his real property without title in malicious prosecution and abuse of process, and the public judicial corruption of New Mexico has affirmed these criminal acts of conspiracy against rights. Derringer had to be a party to protect his property and had to be a party over any issues of "water" before April, 1996 and was denied due process and opportunity to be heard. No court can Order denial of 14th Amendment rights to protect this injustice and cannot fine and persecute an American for legal ownership of private property as guaranteed by the Legislature. This fraud has been affirmed by the NM Supreme Court in violation of Constitution so the public corruption of the New Mexico Courts is thus exposed by the "whistleblowing" litigation that now shows the United States Supreme Court that the NM Court justices are involved in a violation of Title 42 Section 1985 in a scheme of 14th Amendment deprivations, meant to protect the "racketeering"industry of New Mexico and other corrupt justices. United States v. Guest, 383 US 745 (1966); Griffin v. Breckenridge, 403 US 88 (1971) Footnote[101] 383 US 787 (1966) due process clause, Footnote [102] equal protection clause, Footnote [103] Sec. 5 empowers Congress to enact laws punishing all conspiracies to interfere with the exercise of Fourteenth Amendment Rights". The NM Supreme Court has a total disregard for the Constitution and a disregard the intent of the Legislature to enable a living to create an "ethical" industry in New Mexico. State v. Southern Pacific Co., 281 P.29, 34 NM 306 "N.M. 1929 Statutes, though imperfect in form, should be upheld and sustained by the courts..".

THEREFORE, the petition for a Writ of Certiorari should be granted.

Respectfully submitted by David Derringer

David Derringer Pro-Se, Box 157, Quemado, New Mexico 87829

APPENDIX A

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
JAN 28, 2003 3:50PM
COURT CLERK

STATE OF NEW MEXICO
COUNTY OF CATRON
IN THE SEVENTH JUDICIAL DISTRICT COURT
No. D-0728 CV 00094-00010
MICK C. CHAPEL and JENNIFER CHAPEL,
Plaintiffs,
vs.
SUSAN M. NEVITT, NORMA J. NEVITT and DAVID DERRINGER,
Defendants,

DECISION AND ORDER
(Motion to Enjoin Filing of Additional Papers)

THIS MATTER came on before the Court upon the Plaintiff's Motion for Injunction to Enjoin the Filing of Additional Motions, Pleadings, or Other Papers by Pro-Se Defendants. My decision follows:

Plaintiffs seek an injunction against the Defendants enjoining them from filing further complaints, motions, pleadings, discovery requests, or other papers unless the proposed filing is made by an attorney licensed to practice law in the State of New Mexico or has the prior approval of the Court. The Motion does not seek to prohibit Defendants from responding to Plaintiff's motions nor from appealing from the decision arising out of the January 13, 2003 trial.

Plaintiffs rely on Lepiscopo v. Hopwood, 110 N.M. 30 (Ct. App. 1990) and State ex Rel. Bardacke v. Welsh, 102 N.M. 592 (Ct. App. 1985). The conduct of the Defendants is correctly and succinctly

documented in Plaintiff's motion. Indeed, another suit not listed in the motion was filed recently by Susan Nevitt in the federal district court. The conduct of Defendants falls within the type of conduct described in Lepiscopo and Welsh. The unusual injunctive relief sought is appropriate in this case.

The relief sought by Plaintiffs is appropriate and will be granted. Plaintiffs are to prepare the injunction.

/s/ Thomas G. Fitch
Thomas G. Fitch
District Judge, Div. II

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
FEB 12, 2003 1:45PM
COURT CLERK

STATE OF NEW MEXICO
COUNTY OF CATRON
SEVENTH JUDICIAL DISTRICT

No. CV 94-10
Judge Thomas G. Fitch

MICK C. CHAPEL and
JENNIFER CHAPEL,
Plaintiffs,

vs.

SUSAN M. NEVITT,
NORMA J. NEVITT and
DAVID DERRINGER,
Defendants,

INJUNCTION PROHIBITING THE FILING OF MOTIONS, PLEADINGS OR OTHER PAPERS BY PRO-SE DEFENDANTS

DAVID DERRINGER, SUSAN NEVITT, OR NORMA NEVITT

This matter having come before the Court upon Mick Chapel and Jennifer Chapel's Motion for Injunction to Enjoin the Filing of Additional Motions, Pleadings or other Papers by Pro-Se Defendants and the Court, after having considered the Motion, the response and the voluminous record herein, finds that Defendants have filed numerous frivolous and repetitious motions and papers that have served no valid purpose and have consumed the Court's and parties' valuable time and resources and finds that the Plaintiffs have no adequate remedy at law for these continuing frivolous filings and that specific injunctive relief is appropriate.

NOW THEREFORE, the Court orders as follows:

1. Defendants David Derringer, Susan Nevitt and Norma Nevitt are hereby enjoined from filing any further motions, pleadings, or other papers requesting relief in this case or from filing further complaints against Plaintiffs, unless or until the proposed filing is signed by an attorney licensed to practice law in New Mexico or the proposed filing receives the prior approval of the Court.

2. The Clerk of the District Court is directed not to accept for filing herein any further Pro-Se pleadings, motions or other papers from either David Derringer, Susan Nevitt or Norma Nevitt, unless they have been approved, in writing, by the Court.

3. This injunction shall not prohibit David Derringer, Norma Nevitt or Susan Nevitt from filing a response to any motion, discovery request or papers filed by the Chapels in any legal proceeding. (Hand written) nor filing any appeal.

/s/ Thomas G. Fitch
District Judge

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
FEB 12, 2003 1:45PM
COURT CLERK

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF CATRON
STATE OF NEW MEXICO

No. CV 94-10
Judge Thomas G. Fitch

MICK C. CHAPEL and
JENNIFER CHAPEL,
Plaintiffs,

vs.

SUSAN M. NEVITT,
NORMA J. NEVITT and
DAVID DERRINGER,
Defendants,

THIRD FINAL JUDGEMENT AND INJUNCTION

THIS MATTER, having come before the Court for trial on the merits of plaintiffs' Renewed Motion to Enforce Judgement and for Order to Show Cause for Civil Contempt, and the Court after having entertained a trial on the merits and duly considered the evidence, testimony and arguments of the parties and the parties' proposed findings of fact and conclusions of law, and after having entered its Decision and Findings of Fact and Conclusions of Law on January 28, 2003, now enters its Third Final Judgement and Injunction as follows:

IT IS ORDERED, ADJUDGED, DECREED AND DECLARED:

1. Judgement is hereby entered against David Derringer, Susan Nevitt and Norma Nevitt jointly and severally and in favor of Mick Chapel and Jennifer Chapel in the amount of $3,545.00

compensatory damages, plus $20,000.00 in punitive damages, plus additional punitive damages in the amount of $100.00 per day from the date hereof until the Mandatory Injunction set forth in paragraph 2 below is satisfied, as determined by further Order of this Court. Mick and Jennifer Chapel are further awarded their costs at trial herein and reasonable attorney fees in an amount to be determined. Plaintiffs are further awarded post-judgement interest on said sum at the rate of 15 per cent per annum from the date hereof until paid in full.

2. David Derringer, Susan Nevitt and Norma Nevitt are HEREBY ORDERED to remove any and all dams, structures, pipes, culverts, ponds, impoundments or obstructions of any sort to the free flow of water in Harris Creek within their property, specifically including removal of Moonbeam dam and the driveway dam (a/k/a Cattail dam), and to do so at their own cost and without causing downstream damage to the Chapels' property. Defendants are to do so within 45 days hereof.

3. If defendants fail to remove the two dams across the Harris Creek on their property within 45 days, then plaintiffs may retain a contractor or other suitable person or persons to do so who shall be entitled to enter upon defendants' property with the assistance of the Catron County Sheriff and remove the two dams. The reasonable cost of such shall be added to the judgement against the defendants after the Court's receipt of proof and such costs and hearing, if necessary.

4. The terms of this Court's prior May 17, 1996 Judgement and the September 24, 2001 Judgement and Injunction entered herein remain unchanged and in full force and effect. David Derringer, Susan Nevitt and Norma Nevitt, their agents, employees or assigns are HEREBY ORDERED not to divert, use, obstruct or appropriate any water from Harris Creek until and unless plaintiffs have appropriated 80.75 acre feet of water per year, in accordance with the terms of the

May 17, 1996 Judgement and September 24, 2001 Judgement previously entered herein.

DONE THIS ____DAY OF _____,2003

/s/ Thomas G. Fitch
District Judge

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED
JUN 13, 2003
/s/ Patricia R. Wallace (stamp)

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MICK CHAPEL and JENNIFER CHAPEL, No. 23,815
Plaintiffs-appellees,

vs.

SUSAN M. NEVITT, NORMA J. NEVITT,
and DAVID DERRINGER,
Defendants-Appellants,

APPEAL FROM THE DISTRICT COURT OF CATRON COUNTY
Thomas G. Fitch, District Judge

Joseph E. Manges
Comeau, Maldegen, Templeman & Indall, LLP
Santa Fe, New Mexico Attorney for Plaintiffs-Appellees

David Derringer
Susan M. Nevitt
Norma Nevitt
Quemado, New Mexico Pro-Se Defendants-Appellants

MEMORANDUM OPINION

ALARID, Judge,

Defendants appeal a number of orders leading up to and following a third final judgement and injunction. We proposed summary affirmance of the trial court's orders. Defendants have timely responded to our proposal. We have considered their arguments and, finding them unpersuasive, we affirm. We deny Defendants' Motion to reset to the general calendar and motion to stay the state court proceedings pending decision of several federal court cases.

In our notice, we proposed to hold that Judge Fitch was not required to recuse himself from hearing the motion to enforce the injunction. We pointed out that there must be a factual basis for doubting the judge's impartiality. State ex rel. Bardacke v. Welsh, 102 N.M. 592, 606, 698 P.2d 462, 476 (Ct. App. 1985). Defendants have responded with their allegations regarding Judge Fitch's involvement with the property before he became a judge. They argue that because Judge Fitch had already been involved with the Chapels in an allegedly fraudulent transfer of property belonging to Defendants' predecessor in interest, he already had a personal bias in favor of the Chapels. They argue that Judge Fitch has simply continued to support the Chapels in their violations of the law. First, the record does not establish, beyond Defendants' allegations, that Judge Fitch was involved in a fraudulent transfer of property. Second, even if Judge Fitch had been involved as a lawyer in a land transaction involving the Chapels, we do not believe that mandates his recusal in this particular case. He did not represent either of the parties in this case and he does not have a pecuniary interest in this case. See Code of Judicial Conduct 21-400 NMRA 2003.

Defendants refer in their memorandum to a number of things showing bias and partiality of Judge Fitch. [MIO 4] Those matters, however, concern actions that were taken in this case. Thus, they

cannot be viewed as matters arising from a personal, extra-judicial source. Defendants have failed to show a personal, extra-judicial bias or prejudice requiring recusal in this case. See Purpura v. Purpura, 115 N.M. 80, 847 P.2d 314 (Ct. App. 1993) (finding that recusal was not required for prior judicial encounters).

Defendants allege that the judge has been involved in criminal attacks on them, including death threats, intimidation, and telephone harassment. There is nothing in the record aside from Defendants' allegations establishing such attacks. We cannot rely on Defendants' assertions to support such an allegation. Cf. In re Application of Metro. Inv. Inc. 110 N.M. 436, 441, 796 p.2d 1132, 1137 (Ct. App. 1990) (stating that arguments of counsel are not evidence). Therefore, we continue to hold that there was no extra-judicial source to establish the bias of Judge Fitch. See State v. Reynolds, 111 N.M. 263, 267, 804 P.2d 1082, 1086, (Ct. App. 1990) (stating that matters outside the record present no issue for review).

Defendants continue to argue that Derringer was a necessary and indispensable party to the original suit and that his absence in that suit prohibits any actions to enforce the injunction against him. As we pointed out in our notice, Derringer did not have an ownership interest in the property at the time that the suit was filed. Therefore, he was not an indispensable party. Defendants argue that Derringer became a property owner before the trial in the original suit and should have been made a party at that time. It is not clear from the record that Derringer notified the trial court that he was now an owner of the property and was entitled to be made a party to the proceedings. As we pointed out in our notice, it was incumbent upon him to notify the trial court of his claim to an interest in the property. CR Matter of Estate of Gaines, 113 N.M. 652, 657-58, 830 P.2d 569, 574-74 (Ct. App. 1992) (pointing out that the timing of a motion regarding indispensable status in important).

Defendants contend that Derringer was intentionally kept out of the case so that the Chapels and the judge could succeed in their perjury and fraud without him. They argue that Derringer was not made a party so as to deprive him of his right to be heard in the original suit. They appear to be suggesting that Derringer was not made a party until after the judgement so as to subject him to a judgement that he had no opportunity to object to. There is nothing in the record to support this allegation.

We recognize all of the case law pointed out to us by Defendants indicating that a judgement where an indispensable party was not joined is void. We recognize that a court cannot grant complete relief without all of the parties that well be affected. However, at the time that judgement was initially entered in this case, there was not indication that Derringer was a person whose rights would be affected by the judgement. Defendants argue that Plaintiffs and the judge engaged in a conspiracy to keep Derringer out of the litigation. The motion in limine cited to by the Defendants concerned only the purported testimony of Derringer. [RP 817] There is nothing in this motion suggesting that Derringer could not become a party to the action, only that his testimony would not be allowed at trial without his attendance at a deposition beforehand. There is nothing in the record showing that Derringer attempted to become a party and was prohibited from doing so.

Defendants contend that Derringer was also illegally kept from joining the case in 2000 when Plaintiffs sought to enforce the 1996 injunction. The record indicates otherwise, however. It appears that Derringer was made a party to the action in 2000. [RP 1764] Defendants argue that this late entrance of Derringer into the case means that the 1996 injunction could not be enforced against him. We disagree. When Derringer became a party to the action, the prior judgement also applied to him. Defendants appear to be arguing that

the enforcement actions were new actions. Thus, they argue, the 1996 judgement could not be enforced as to Derringer because he was not a party to that particular judgement. However, he became a party to that judgement when he joined that action as party. That fact that he was not a party until the enforcement action does not matter. The enforcement action was simply a continuation of the injunction. Derringer was made a party to the action. Thus, he could be bound by the 1996 judgement.

Defendants continue to argue that Plaintiffs were in violation of state law with their dam impounding waters from the Harris Creek. As we pointed out in our notice, any arguments regarding the legality of the Plaintiff's dam have been fully litigated or should have been litigated in 1996. Whether or not Plaintiffs committed perjury regarding their dam was a matter for the court and jury to determine in 1996. Defendants engage here in simply rehashing the matter. This Court will not review matters that have been or should have been litigated in 1996. Defendants' threats that this Court will commit criminal fraud by upholding the ruling regarding Plaintiff's dam will avail them nothing. The right to certain waters of the Harris Creek was litigated in 1996. The fact that Defendants are unhappy with the result and that they believe that Plaintiffs lied at the trial does not allow them to come before this Court again and again raising the same complaints. We will not address issues that have already been decided.

Insofar as Defendants are arguing that they have a constitutional right to their stock ponds and that Plaintiffs and Judge Fitch are stealing that right, we do not believe that this was a matter before the trial court in this action. It appears that the trial court determined that Defendants' entitlement to stock ponds was not relevant to whether or not the injunction was being violated. We agree that any entitlement to stock ponds was not a matter of concern in this case. The sole issue before the trial court was whether or not

Defendants had violated the court's order regarding Harris Creek.

Defendants also argue that the trial court had no authority to order a criminal trespass onto their private property. Because their property is "private", they contend that the trial court did not have any jurisdiction to make any order regarding their property. They contend that the trial court's order enforcing the injunction allowed a criminal trespass onto their property. They contend that this Court cannot uphold such criminal activity. The enforcement of the injunction is not a criminal trespass even if it requires the entry onto private property in order to take some action. Cf Romero v. Sanchez, 119 N.M. 690, 693, 895 P.2d 212, 215 (1995) (stating that officer did not trespass as he had a right to be on the property).

Defendants continue to argue that the trial court harassed and intimidated them to such an extent that two of them were not present at the trial. Defendants rehash the alleged factual basis to support their claim of harassment and intimidation. This Court does not make factual findings. We only review the law to determine whether a legal error has occurred. Here, the claim of error is that the trial court conducted the hearing on the motion to enforce the injunction without the presence of two of the defendants. Why they were not present is not relevant here. As we pointed out in our notice, Defendants' presence was not required in order for the trial court to proceed to hear the matter. Cf Chase v. Contractors' Equipment & Supply, 100 N.M. 39, 41, 665 P.2d 301, 303 (Ct. App. 1983) (pointing out that a trial can go forward without defendants or their attorney).

Defendants contend that there is support on the tape of the hearing for their contention that the trial court attempted to gain information regarding the federal law suits during the hearing. They argue that we need to assign this matter to the general calendar in order to review that tape. We will not do so, however, where the appellant has made no attempt to provide this Court with the details

of the facts supporting his claim. It is the obligation of the appellant to provide this Court with all the facts relevant to his issues. Here, Defendants simply state that the trial court attempted to depose Derringer at the hearing. It was incumbent upon them to provide us with the facts to support this claim. Such as the questions asked by the trial court and the responses made by Derringer. They did not do so and our review of the tape log shows no indication that there was any discussion about the federal law suits. [RP 3371-3390] We will not assign this case to the general calendar simply because Defendants are unable or unwilling to provide us with the detailed facts relevant to this issue.

Defendants continue to argue that the trial court had no right to affect their private property and that such action was a violation of 42 U.S.C. 1982. As we pointed out above, the entry upon that property to enforce the injunction is not a trespass. The judge's order is not criminal and does not illegally destroy Defendants' property. Thus, we cannot say that there was a violation of 1982.

Defendants appear to be arguing that their due process rights are denied by the order of the trial court regarding further filing of pleadings in the district court. As we pointed out in our notice, the courts can constitutionally restrict a litigant's access to the court. State ex rel. Bardacke, 102 N.M. at 597, 698 P.2d at 467. Such restrictions can be a limitation on both the filing of pleadings and the length of pleadings. Defendants argue that there is no rule regarding the length allowed for certain pleadings. We agree. However, where the length becomes cumbersome and unduly repetitious, the courts can and will place a limit. This is so regardless of whether the pleadings are filed by attorneys or pro se litigants. We point out that when a case is placed on the general calendar for full briefing, the briefs can be no longer than 35 pages. Rule 12-213(F) NMRA 2003. We do not believe that other pleadings in this Court need to be longer than a brief-in-

chief. Thus, we do not believe it is unreasonable to limit the length of pleadings in this Court.

Defendants continue to argue that this Court has the ability and jurisdiction to take action regarding the trial court's violation of state law and the Code of Judicial Conduct. We recognize that we can apply the law and constitution to protect litigants from violations of their rights. However, there is no basis here for us to do so. As we stated earlier, the trial court had jurisdiction here to enter the injunction regarding the water rights in the Harris Creek. The trial court also had jurisdiction to enforce that injunction, even to the point of having a dam destroyed. There is no evidence in the record that the trial judge violated state law or the Code of Judicial Conduct. Therefore, there is no basis for us to take any action against the trial court. Moreover, this Court has no authority to remove a district court judge.

As we pointed out in our notice, judges are absolutely immune from suit in connection with their official duties. See Collins on Behalf of Collins v. Tabet, 111 N.M. 391, 396, 806 P.2d 40, 45 (1991) (stating that a judge should not have to fear that an unsatisfied litigant may hound him with litigation charging malice or corruption). Defendants' allegations of criminal and unethical actions on the part of the trial court appear to be in connection with this case. Thus, the allegations appear to be in connection with the judge's official duties. Therefore, it would appear that the trial court is immune from suit here. Even if the trial court was not immune from suit, this Court is not the forum for such complaints. This Court has jurisdiction only to address error that may have occurred in the trial court. The trial court's allegedly criminal and unethical actions do not form the basis for reviewable error.

Defendants continue to argue that the record will show that the trial court made death threats against them. They cite, however, to

their federal court complaint. That does not establish a record in this case. Further, the presence of deputy sheriffs in the courtroom does not establish that Derringer was going to be arrested and killed in jail. Deputies are often present for the purposes of safety of the court. Likewise, the fact that Plaintiffs' counsel asked the trial court to jail Derringer does not establish a murder plot. Rather, it appears that the request was made as remedy for violation of the injunction. Violation of an injunction is contempt of court for which a party may be jailed. Nevertheless, the record clearly shows that Derringer was not arrested. Therefore, we fail to see what error occurred here.

Defendants continue to argue that their due process rights were violated by not allowing Derringer to litigate the issues. As we pointed out earlier, Derringer was not a necessary and indispensable party at the time the original judgement was entered. There was no inherent jurisdictional defect in that judgement. Thus, it is res judicata. The trial court's order requiring Defendants to abide by its injunction does not illegally deprive Defendants of their property rights. Whether or not the Plaintiffs are in violation of the statute regarding water rights is not relevant to this case. This case concerns only Defendants' control over the flow of the Harris Creek. That matter was litigated to final judgement. Yet Defendants continue to violate the terms of that judgement. It is that violation that was before the court below, and is before us now. There is nothing in the record to suggest collusion between the trial court and the Plaintiffs. The trial court is simply attempting to enforce its judgement. Defendants were given an opportunity to respond to the claim that they are not abiding by the judgement. That is all due process requires. Due process does not require that the be allowed to relitigate the earlier judgement. We hold that the record indicates that Defendants were not denied their right to due process in this case.

For the reasons stated herein and in the notice of proposed

disposition, we affirm.

IT IS SO ORDERED.

/s/ A. Joseph Alarid
A. JOSEPH ALARID, Judge

WE CONCUR:

/s/ Lynn Pickard
LYNN PICKARD, Judge

/s/ Cynthia A. Fry
CYNTHIA A. FRY, Judge

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED
JUN 27, 2003
/s/ Patricia R. Wallace (stamp)

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MICK CHAPEL and JENNIFER CHAPEL, No. 23,965
Plaintiffs-appellees,

vs.

SUSAN M. NEVITT, NORMA J. NEVITT,
and DAVID DERRINGER,
Defendants-Appellants,

APPEAL FROM THE DISTRICT COURT OF CATRON COUNTY
Thomas G. Fitch, District Judge

Joseph E. Manges
Comeau, Maldegen, Templeman & Indall, LLP
Santa Fe, New Mexico Attorney for Plaintiffs-Appellees

David Derringer
Susan M. Nevitt

Norma Nevitt
Quemado, New Mexico Pro-Se Defendants-Appellants

MEMORANDUM OPINION

ALARID, Judge

Defendants appeal an order awarding Plaintiffs' attorney fees in conjunction with the third final judgment and injunction. We proposed summary affirmance of the trial court's order. Defendants have timely responded to our proposal. We have considered their arguments and, finding them unpersuasive, we affirm.

Initially, we point out that we have already affirmed by memorandum opinion the judgement and injunction. Chapel v. Nevitt & Derringer, Ct. App. No. 23,815 (filed June 13, 2003). Many of the issues raised in this appeal were identical to those raised in No. 23,815. In our calendar notice in this case, we proposed to rely on the same analysis for the issues that were the same. The propriety of the judgment and injunction is now law of the case. See DeMatteo v. County of Dona Ana, 109 N.M. 374, 379, 785 P.2d 285, 290 (Ct. App. 1989) (stating that the law applied in the first appeal is binding on this Court if there are no further appeals). Therefore, we do not address the issues attacking the judgement in this opinion.

Much of the Defendants' memorandum in opposition in this case attacks the jurisdiction of the district court to affect their private property rights in their stock ponds and their roads. They argue that because they have a statutory and constitutional right to their stock pond, the district court has no jurisdiction to order that the dams for those ponds be destroyed. Defendants apparently fail to understand that this case is solely about whether or not they violated the terms of the district court's injunction and whether or not the district court could order them to pay damages including attorney fees. They continue to argue that the district court's order to destroy the dams is a criminal action and violates their statutory right to maintain a stock

pond. Thus, they contend that the award of attorney fees in conjunction with the order to destroy the stock ponds is improper.

Defendants contend that because the district court did not have any authority to order the destruction of their dams, it could not award attorney fees for the legal action taken by Plaintiffs to force Defendants to comply. As we pointed out in No. 23,815, the district court properly ordered Defendants to comply with its injunction regarding the waters of the Harris Creek and destroy their dams. Because that order was proper, the district court had authority to award attorney fees to Plaintiffs. See El Paso Prod. Co. v. PWGP'ship, 116 N.M. 583, 592, 866 p.2d 311,320 (1993) (stating that where a party is required to enforce court orders, then it is entitled to damages, including attorney fees).

Defendants contend that the district court and Plaintiffs' are persecuting them with the award of attorney fees. They argue that Plaintiffs have engaged in criminal conduct requiring Defendants to defend themselves. Then when lose that defense, the district court awards attorney fees. There is no evidence in the record of such an intent to persecute Defendants. Plaintiffs are entitled to have the district court's order enforced if the Defendants refuse to comply. When they are required to go to court to enforce a judgement, we cannot say that shows evidence of persecution.

We hold that the district court had authority to award attorney fees. Defendants do not attack the amount of the fees, simply whether or not any fees should have been awarded. Since we uphold the authority of the district court to award the fees, we likewise affirm the amount of the award.

For reasons stated herein and in the notice of proposed disposition, we affirm.

IT IS SO ORDERED.

/s/ A. Joseph Alarid

A. JOSEPH ALARID, Judge

WE CONCUR:

/s/ Lynn Pickard
LYNN PICKARD, Judge

/s/ Cynthia A. Fry
CYNTHIA A. FRY, Judge

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED
JUL 2, 2003
/s/ Patricia R. Wallace (stamp)

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MICK CHAPEL and JENNIFER CHAPEL, No. 23,815
Plaintiffs-appellees,

vs.

SUSAN M. NEVITT, NORMA J. NEVITT,
and DAVID DERRINGER,
Defendants-Appellants,

A.JOSEPH ALARID
Presiding Judge
LYNN PICKARD
Judge
CYNTHIA A. FRY
Judge

ORDER ON MOTION FOR REHEARING

In this cause, a motion for rehearing having been filed by Appellants, and consideration having been had by all of the panel members of the original panel.

IT IS ORDERED that the Motion for rehearing is hereby

DENIED.

/s/ A.Joseph Alarid
Presiding Judge

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED
JUL 30, 2003
/s/ Patricia R. Wallace (stamp)

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MICK CHAPEL and JENNIFER CHAPEL, No. 23,965
Plaintiffs-appellees,

vs.

SUSAN M. NEVITT, NORMA J. NEVITT,
and DAVID DERRINGER,
Defendants-Appellants,

A.JOSEPH ALARID
Presiding Judge
LYNN PICKARD
Judge
CYNTHIA A. FRY
Judge

ORDER ON MOTION FOR REHEARING

In this cause, a motion for rehearing having been filed by Appellants, and consideration having been had by all of the panel members of the original panel.

IT IS ORDERED that the Motion for rehearing is hereby DENIED.

/s/ A.Joseph Alarid
Presiding Judge

THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 11, 2003

No. 28,173

MICK C. CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Respondents,

vs.

SUSAN NEVITT, NORMA NEVITT and DAVID DERRINGER,

Defendants-Petitioners,

ORDER

This matter coming on for consideration by the court upon petition for writ of certiorari, and the Court having considered said petition, and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is denied in Court of Appeals number 23815.

IT IS SO ORDERED.

ATTEST; A TRUE COPY

WITNESS, the Hon. Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th Day of August, 2003.

/s/ Madeline Garcia
Clerk of the Supreme
Court of the State of New
Mexico

(SEAL)

/s/ Madeline Garcia
Madeline Garcia, Chief Deputy Clerk

THE SUPREME COURT OF THE STATE OF NEW MEXICO

September 19, 2003

No. 28,217

MICK C. CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Respondents,

vs.

SUSAN NEVITT, NORMA NEVITT and DAVID DERRINGER,

Defendants-Petitioners,

ORDER

This matter coming on for consideration by the court upon petition for writ of certiorari, and the Court having considered said petition, and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is denied in Court of Appeals number 23965.

IT IS SO ORDERED.

ATTEST; A TRUE COPY

WITNESS, the Hon. Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 19th Day of September, 2003.

/s/ Madeline Garcia
Clerk of the Supreme
Court of the State of New
Mexico

/s/ Madeline Garcia

(SEAL) Madeline Garcia, Chief Deputy Clerk

THE SUPREME COURT OF THE STATE OF NEW MEXICO

September 2, 2003

No. 28,173

MICK C. CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Respondents,

vs.

SUSAN NEVITT, NORMA NEVITT and DAVID DERRINGER,

Defendants-Petitioners,

ORDER

WHEREAS this matter came on for consideration by the court upon Motion for Reconsideration, and the Court having considered said motion, and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the motion for reconsideration hereby is denied.

IT IS SO ORDERED.

ATTEST; A TRUE COPY

WITNESS, the Hon. Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 2nd Day of September, 2003.

/s/ Madeline Garcia
Clerk of the Supreme
Court of the State of New
Mexico

(SEAL)

/s/ Madeline Garcia
Madeline Garcia, Chief Deputy Clerk

THE SUPREME COURT OF THE STATE OF NEW MEXICO

October 8, 2003

No. 28,217

MICK C. CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Respondents,

vs.

SUSAN NEVITT, NORMA NEVITT and DAVID DERRINGER,

Defendants-Petitioners,

ORDER

WHEREAS this matter came on for consideration by the court upon Motion for Reconsideration, and the Court having considered said motion, and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the motion for reconsideration hereby is denied.

IT IS SO ORDERED.

ATTEST; A TRUE COPY

WITNESS, the Hon. Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 8th Day of October, 2003.

/s/ Madeline Garcia
Clerk of the Supreme
Court of the State of New
Mexico

(SEAL)

/s/ Madeline Garcia
Madeline Garcia, Chief Deputy Clerk

APPENDIX B

EXHIBITS 1

IN THE MATTER OF:

MICK C. CHAPEL and JENNIFER CHAPEL V. SUSAN M. NEVITT and NORMA J. NEVITT

RAY H. EICHNER

Vol. 1, June 13, 1994

Bean & Associates, Inc.

Professional Court Reporting Service

500 Marquette, N.W., Suite 280, Albuquerque, NM 87102

123 East Marcy, Suite 208, Santa Fe, New Mexico 87501

(505) 843-9494 or (800) 669-9492

Original file eic61394.v1,80 Pages

Q. Could I look at that please? Do you think you signed it last July, Mr. Eichner?

A. I don't know.

Q. You say you don't know?

A. No.

Q. All right, Mr. Eichner. You just don't know when you signed it?

A. Huh-uh.

Q. Do you have a recollection of actually signing it? Do you have a memory that you actually signed it, sir? Now you're hesitating.

A. Sure, I'm hesitating.

Q. Well, you either remember it, or you don't. If you don't remember it, all you have to do is say so.

A. No, I don't remember.

ELKHORN REALTY

8 October 1993

V9336

EXPRESS MAIL

Willard W. & Lucy W. Rimbach
1109 S. Sutro Terrace
Carson City, Nevada 89706

RE: Grant of Right of Way Easement
Carolyn Root & John Twobirds

Dear Willard & Lucy:

Enclosed please find the "Grant of Right of Way Easement" we discussed.

Please sign, where indicated, and return to our office as soon as possible, together with the Quit Claim Deed and Closing Escrow Instructions we transmitted under separate cover, (handwritten)We received these today thanks TGF

By copy of this letter, we are sending the easement document to Twobirds, Nevitt and Chapel for their review and/or signatures.

Thank you for your cooperation in this matter.

Sincerely,

ELKHORN REALTY

/s/ Robert M. Fisher

Robert M. Fisher, Broker

RHF:bf

Enclosure: Grant of Right of Way Easement

cc: Carolyn Root & John Twobirds
Susan M. Nevitt & Norma J. Nevitt
Mick & Jennifer Chapel (handwritten) fax to attorney

Thomas G. Fitch
Attorney At Law
P.O. Box 1547
Socorro, New Mexico
210 Park Street SW
Area Code 505

Socorro, New Mexico Telephone 835-0111

May 11, 1994

Mr. John Twobirds
Ms. Carolyn Root
P.O. Box 341
Quemado, New Mexico 87829

Dear Ms. Root and Mr. Twobirds:

Enclosed herewith please find the original Deed of Confirmation (settling boundary line) that Mr. and Mrs. Eichner conveyed to you in reference to the NE1/4SE1/4 of Section 28, Township 2 South, Range 17 West, NMPM. Please note that this has been recorded with the Clerk of Catron County, New Mexico, in Book 14, pages 825-828.

Also enclosed is a copy of the Deed of Confirmation (settling boundary line) from you both to Mr. and Mrs. Eichner and a copy of a Grant of Easement (confirmation of easement) from you both tot he Eichners which have been recorded with the Clerk of Catron County, New Mexico.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ Thomas G. Fitch
Attorney at Law

tgf/t
encls: As stated
cc: Mr. & Mrs. Ray H. Eichner w/copies of encls.
Gene Baca w/copies of encls.
United National Real Estate

Thomas G. Fitch
Attorney At Law
P.O. Box 1547
Socorro, New Mexico

210 Park Street SW
Socorro, New Mexico

Area Code 505
Telephone 835-0111

May 11, 1994

Mr.and Mrs. Ray Eichner
RR/HCR #84, Box 9011
Edgewood, New Mexico 87015

Dear Mr. and Mrs. Eichner:

Enclosed herewith please find the original Deed of Confirmation (settling boundary line) from Twobirds and Root to you which has been recorded with the Clerk of Catron County, New Mexico, in Book 14, pages 825-828.and the original Grant of Easement (confirmation of easement) from Twobirds and Root to you which has been recorded in Book 14, pages 123-126.

Also enclosed is a copy of the Deed of Confirmation from you to Twobirds and Root which was recorded with the Clerk of Catron County, New Mexico.

Please let me know If you have any questions.

Very truly yours,

/s/ Thomas G. Fitch
Attorney at Law

tgf/t

cc: Gene Baca w/encls.
Robert Fisher w/ encls.

EXHIBIT 2

IN THE SEVENTH JUDICIAL DISTRICT
COUNTY OF CATRON-SIERRA-SOCORRO-TORRANCE
STATE OF NEW MEXICO
CHAPEL,
V. Cause No. CV-94-10
NEVITT,

Preliminary Injunction
Before the Honorable Leslie C. Smith
June 14, 1994
2:18P.M.

APPEARANCES

FOR THE PLAINTIFF: MR. CHARLES M. OFELT
Attorney at Law
8010 Menaul Boulevard, Northeast
Albuquerque, New Mexico 87112

FOR THE DEFENDANT: MR. ELVIN KANTER
MS. MARILYN O'LEARY
Attorneys at Law
505 Marquette Avenue, Northwest
Albuquerque, New Mexico 87102

(On the witness stand Mick Chapel)

Q. Do you have a storage pond on your property for water?
A. Yes, sir.
Q. Is that a pretty good-sized pond?
A. It covers about two acres, yes, sir.
Q. That's two acres. That's pretty shallow.
A. No, it's fairly deep. It's about probably 16 feet deep.
Q. What size was this when you acquired this property?
A. Five acre feet.

Q. You enlarged it?

A. Yes, sir.

Q. Did you get a permit?

A. No, sir.

EXHIBIT 3

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF CATRON
STATE OF NEW MEXICO

CASE No. CV-94-10

MICK C. CHAPEL and JENNIFER CHAPEL,
Plaintiffs,

vs.

SUSAN M. NEVITT and NORMA J. NEVITT,
Defendants,

DEPOSITION OF MICK CHAPEL
October 12, 1994
9:30a.m.
Catron County Courthouse
Reserve, New Mexico 87830

PURSUANT TO THE RULES OF CIVIL PROCEDURE this deposition was:

TAKEN BY: Mr ROBERT DALE MORRISON, ESQ.
ATTORNEY FOR THE DEFENDANTS

REPORTED BY: DEBORAH E. TRATTEL, RPR, CA CCR, CCR #153
St. Rt. Box 615
Placitas, New Mexico 87043

Q. Now, did you do anything to raise the level of your dam or to increase the area of the pond?

A. Yes, sir.

Q. What did you do?

A. We enlarged the pond

Q. When did you do that?

A. About '84.

Q. Did you get any kind of permits or permission from the State Engineer?

A. No, sir.

Q. Is your dam 30 feet high?

A. Approximately, yes.

Q. From the –

A. It's less than that.

Q. What is the height at the highest point?

A. I would say at the highest point it would be 25 feet.

I, MICK C. CHAPEL, do hereby certify that I have read the forgoing pages of my testimony as transcribed, and that the same is a true and correct transcript of the testimony given by me in this deposition, except for the changes made.

/s/ Mick Chapel

Mick C. Chapel

EXHIBIT 4

STATE ENGINEER OFFICE

MEMORANDUM

DATE: May 22, 1995

TO: Thomas C. Turney, State Engineer

THRU: Donald T. Lopez, P.E. Assistant State Engineer

FROM: Charles E. Merritt, P.E. Design & Construction Bureau

SUBJECT: FIELD CHECK OF IRRIGATION STORAGE DAM IN CATRON COUNTY (RE: DERRINGER V. CHAPEL) APPROXIMATELY 18 MILES SOUTH OF QUEMADO, NEW

MEXICO, FILE NO. 02311

As requested, on May 19, 1995, I inspected a small private storage dam in Catron County owned by Mr, Mick Chapel. Accompanying me on the inspection were Messrs. Jim Smith and Wayne Canon of the Albuquerque State Engineer District Office. Mr. Chapel's dam is located directly downstream from Mr. David Derringer's property... Mr. Chapel's dam is about 420 feet long and about 14 feet high at the maximum section.

EXHIBIT 5

STATE ENGINEER OFFICE, DISTRICT 1

Thomas C. Turney

STATE ENGINEER

DRAFT MEMORANDUM

April, 4, 1996

FILES: ...and 02311 Chapel

Priority review of Mick and Jennifer Chapel surface water declaration Nos. 02311

FINDINGS:

The Chapels only claim to water rights in support of their protest is based on Declaration No. 02311, for prior to March 19, 1907. No State Engineer permit or license has been issued nor do the records reflect the adjudication of any water rights to the subject lands.

Declaration No. 02311: Based on the aerial photographs and the cost share agreement between Mr. Armijo and the SCS, the priority date for stock use is estimated to be December 4, 1967. The amount of water for stock purposes has not yet been quantified. Based on the 1968 aerial photographs and the SCS records, a pond can be identified of an approximate size of 5 acre feet. No irrigated acreage can be identified in the 1968 photograph. There is no documentary evidence of irrigation of the claimed 26 acres until the 1975 aerial photograph.

There is no evidence to support the claim of pre-1907 water right for irrigation purposes of use.

EXHIBIT 6

STATE ENGINEER OFFICE, DISTRICT 1

Thomas C. Turney

STATE ENGINEER

MEMORANDUM

June 19, 1996

FILES: ...and 02311 Chapel

Priority review of Mick and Jennifer Chapel surface water declaration Nos. 02311

FINDINGS:

The Chapels only claim to water rights in support of their protest is based on Declaration No. 02311, for prior to March 19, 1907. No State Engineer permit or license has been issued and the records do not reflect the adjudication of any water rights to the subject lands.

Declaration No. 02311: Based on the aerial photographs the priority date for stock use is estimated to be March 14, 1950. The amount of water for stock purposes has not yet been quantified. No irrigated acreage can be identified in the 1935, 1950, 1954 or 1960 aerial photographs. There is no documentary evidence of irrigation of the claimed 26 acres until the 1968 aerial photograph. There is no evidence to support the claim of pre-1907 water right for irrigation purposes of use.

EXHIBIT 7

SPECIAL WARRANTY DEED

Norma J. Nevitt, a single woman dealing with her sole and separate property, and Susan M. Nevitt, a married woman dealing with her sole and separate property, for consideration paid grant to NORMA J. NEVITT, SUSAN M. NEVITT, AND DAVID B. DERRINGER, as

joint tenants with the right of survivorship, whose address if Post Office Box 157, Quemado, New Mexico 87829 the following described real estate in Catron County, New Mexico.

DESCRIPTION OF PROPERTY:

The Northwest Quarter of the Southeast Quarter (NW 1/4, SE 1/4) of Section 28, Township 2 South, Range 17 West, N.M.P.M., Catron County, New Mexico, except that portion thereof lying within the Right-of-Way of New Mexico State Road No. 32, more particularly described by survey of Elder Company in October, 1992, with bearings related to those of said State Road Right-of-Way, as follows:

BEGINNING at the Northwest corner, which is the Center Quarter corner of Said Section 28. marked by a U. S. Forest Service aluminum cap monument set firmly in the ground at a fence corner;

RUNNING from said beginning point South 89 deg. 01 min. 48 sec. E., 1307.32 feet along the east-west centerline of said section to the east center 1/16 corner of said section, similarly marked/

THENCE, S. 01 deg. 02 min. 41 sec. W., 1038.85 feet to a point on the westerly right-of-way line of New Mexico State Road 32, marked by a 5/8" iron reinforcing rod stake set firmly in the ground with plastic cap bearing L. S. No. 4690'

THENCE, S. 28 deg. 57 min. 39 sec. W., 129.96 feet along said road line to and angle point therein, marked by a N.M. Highway Department T-Rail monument in place;

THENCE, S. 28 deg. 57 min. 39 sec. W. 129.96 feet along said road line to its intersection with the sourth 1/16 line of said section 28, which is the southeast corner of the parcel herein described, marked by a 5/8 inch iron reinforcing rod stake set firmly in the ground with cap bearing L.S. No. 4690;

THENCE, N. 89 deg. 08 min. 42 sec. W, leaving said road line, 1182.71 feet along said 1/16 line to the southwest corner of the parcel herein described, which is the south-center 1/16 corner of said section, marked by a U. S. Forest service aluminum cap monument set firmly in the ground;

THENCE, N. 00 deg. 50 min. 44 sec. E. 1330.42 feet along the north-south centerline of said section to the point of the beginning.

EXCEPTING therefrom all that portion thereof lying within the right-of-way of New Mexico State Road 32.

CONTAINING 39.4644 acres, more or less, and subject to any easements of record.

With special warranty covenants.

Witness our hans and seals this day of

/s/ Norma J. Nevitt by Susan M. Nevitt

Susan Nevitt her Attorney in Fact

State of New Mexico County of Catron

The foregoing instrument was acknowledged before me this 11th day of September, 1995 by Norma J. Nevitt by her Attorney in Fact Susan M. Nevitt, and Susan M. Nevitt.

(Seal)

/s/ Bonny Baca

Notary Public

STATE OF NEW MEXICO

CATRON COUNTY

This instrument of writing was filed

for record on the 25th day of September AD

1995 at 1:11 O'Clock PM and duly recorded

in Vol.16 of Deeds on Page 267
/s/ Sharon Armijo
County Clerk
by /s/ VJ
Deputy

EXHIBIT 8

STATE OF NEW MEXICO
COUNTY OF CATRON
IN THE SEVENTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
FILED
MAY 17, 1996 4:47PM
/s/ Virginia Vivian
COURT CLERK

MICK C. CHAPEL and JENNIFER CHAPEL,
Plaintiffs,

vs.

SUSAN M. NEVITT and NORMA J. NEVITT,
Defendants,

JUDGEMENT

THIS MATTER came on to be heard before the court sitting with a six-person jury; the Court having heard the testimony and considered the exhibits; the jury having answered the propounded interrogatories; and the Court having heretofore entered his findings of fact and conclusions of law, ...

Chapel v. Nevitt
Catron County CV-94-10

EXHIBIT 9

AK GEOCONSULT, INC. Geotechnical and Geoenviromental Engineering13212 Manitoba Drive NE Albuquerque, NM 87111-2955

June 29, 2001

Mr. David Derringer

P.O. Box 157

Quemado, New Mexico 87829

REPORT OF ENGINEERING INVESTIGATIONS AND FINDINGS, MATTER OF CHAPEL VS. NEVITT/DERRINGER

Dear Mr. Derringer:

At your request I have conducted an investigation of some of the technical elements associated with the subject litigation, which revolves around allegations of interference with surface water. My investigation consisted of:

A site visit and visual inspections of portions of the Nevitt/Derringer and Chapel properties containing, and adjacent to Harris Creek including conveyance structures through earthfill structures across the creek and the Chapel diversion channel.

Effect of Chapel Surface Water Controls on Nevitt/Derringer Property

based on my visual observations and the results of the land survey (Ref #11), it is apparent that the Chapel diversion works immediately downstream of the property line with Nevitt/Derringer are causing a backwater effect that results in ponding of water on the Nevitt/Derringer property in the North Pond area. The outlet pipes of the North Pond are open. On the day of my inspection, the lowest pipe was flowing full and submerged, due to the effect of the backwater, to a depth of about two inches. However, this flow would

be faster if the water elevation downstream on the Chapel property were lowered, increasing the hydraulic gradient and rate of flow through the pipe and lowering the water level in the North Pond.

There is water flow through the North Dam outlet pipe despite the backwater; water moves according to the hydraulic gradient. The backwater effects are the direct result of the water surface elevation maintained on the Chapel property immediately downstream of the North Pond. The elevation of the water surface in the Chapel pond controls the hydraulic gradient by setting a local base level elevation. Elimination of backwater would require either raising the outlet works in the North Dam, which would amount to an unauthorized impounding of additional water, or lowering the water level in the Chapel pond. The latter is necessary to eliminate the backwater and increase outflow from the North Pond.

Chapel Dam

The land survey (Ref. #11) shows that the average crest elevation of the Chapel Dam is 7661.0 and the elevation of the creek bed off the dam toe is 7646.7, giving a difference of 14.3 feet. Dams that are 10.0 feet or more in height must be designed by a licensed Professional Engineer and permitted by the New Mexico State Engineer.

Respectfully submitted (SEAL)

/s/ Alan K. Kuhn

Alan K. Kuhn, PhD, PE, RPG

Alan K. Kuhn Registered Professional Engineer
New Mexico 6798

EXHIBIT 10

Hydroscience Associates Inc.

P.O. Box 21087
Albuquerque, New Mexico 87154
(505) 271-9175
hydrosci@nm.net

February 12, 1999

An Assessment of Hydrogeologic Issues
and Water Supply Needs Associated
with Application No. 4615
Catron County, New Mexico

Claimed Chapel Water Rights

Through a change of ownership of water right filed on November 17, 1987, Mick and Jennifer Chapel obtained ownership of Declared water right 02311 on Harris Creek....which diverted water through a quarter mile long ditch to a five acre foot earthen storage reservoir.

Description of Physical Works:

The Chapels have an on-channel storage reservoir which covers approximately two surface acres in size and reaches a maximum depth of sixteen feet. The size of the pond was increased in 1986 from the size it was in 1968, and changed from an off-channel to an on-channel reservoir. Harris Creek now flows directly into and out of the pond, as opposed to the off-channel reservoir filled through a 1/4 mile diversion ditch described in Declaration 02311. The present location of the pond and diversion ditch which diverts water from Harris Creek to the pond are significantly different from the way they were described in the Declaration 02311...US Geological survey..in 1981...indicates the northern pond was the Chapel pond before it was enlarged. The northern pond..was..the Chapel pond before it was enlarged.

/s/ Mary Anne Wasiolek

EXHIBITS 11

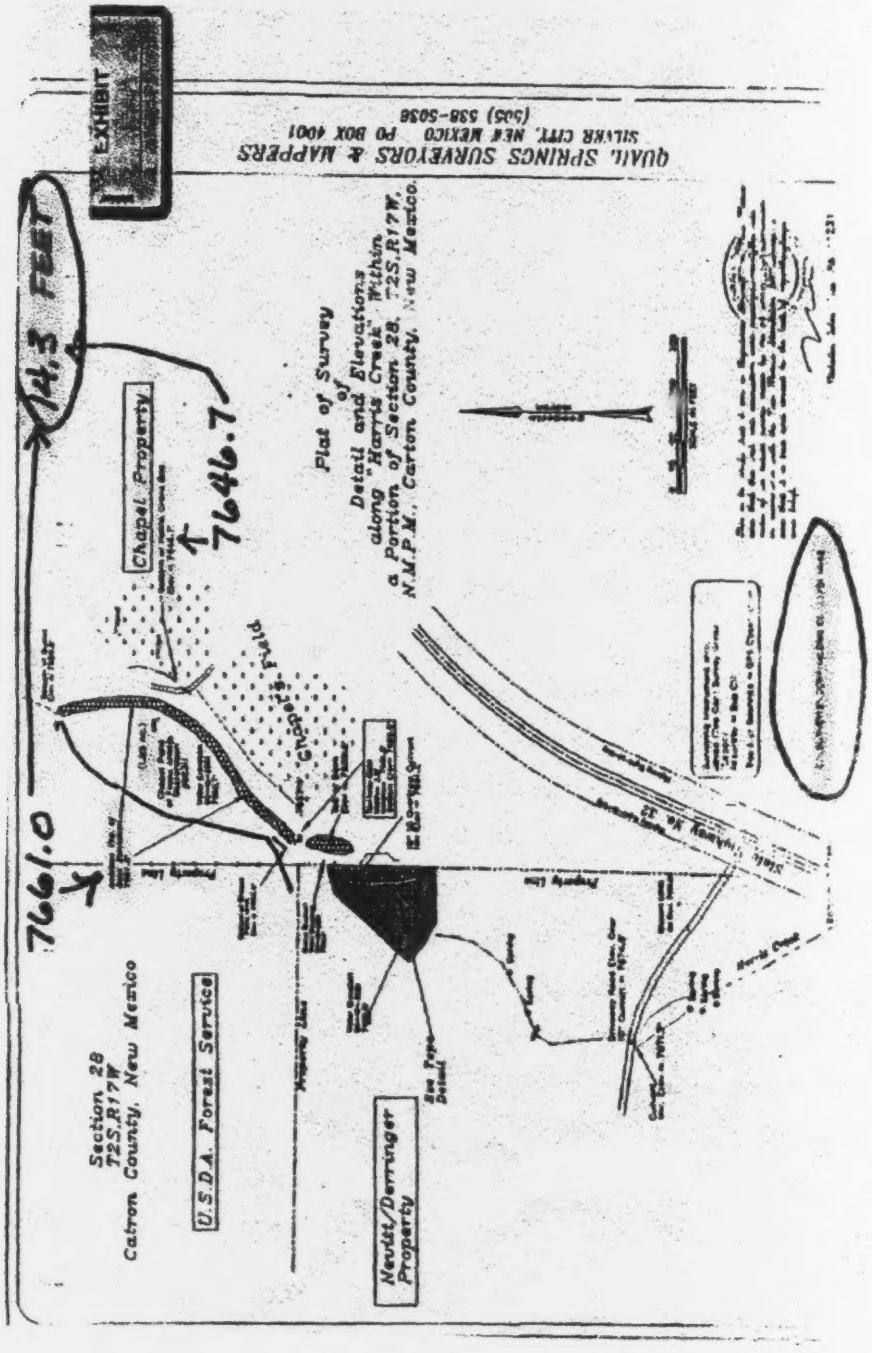


EXHIBIT
14.3 FEET
7646.7
7661.0
Chapel Property
Plat of Survey
of
Detail and Elevations
along "Harris Creek" Within
a Portion of Section 28, T25.R17W.
N.M.P.M., Carton County, New Mexico.
QUAIL SPRINGS SURVEYORS & MAPPERS
SILVER CITY, NEW MEXICO PO BOX 4001
(505) 538-5038
Section 28
T25.R17W
Catron County, New Mexico
U.S.D.A. Forest Service
Nevitt/Dorringer
Property

CHAPEL DAM/POND

DAM HEIGHT-14.3 FEET GPS SURVEY 6/20/2001 QUAIL SPRINGS SURVEY

POND AREA 1.25 ACRES GPS SURVEY 6/20/2001 QUAIL SPRINGS SURVEY

POND DEPTH 16 FEET-MICK CHAPEL TESTIMONY JUNE 14TH, 1994

ILLEGAL CONSTRUCTION OF DAM/POND WITHOUT ENGINEER OR STATE ENGINEER PERMIT BY MICK CHAPEL-TESTIMONY MICK CHAPEL JUNE 14TH, 1994 & MICK CHAPEL DEPOSITION OCTOBER 12, 1994

POND CAPACITY- 1.25 ACRES X 16 FEET DEEP = 20 ACRE/FEET

NMSA 1978/1997, 72-5-32. CONSTRUCTION OF DAMS EXCEEDING TEN FEET IN HEIGHT

Any person, association or corporation, public or private, the state of the United States hereafter intending to construct a dam shall meet the requirements of filing applications for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978/1997. Any person intending to construct a dam that exceeds ten feet in height from the lowest natural ground surface elevation to the crest of the dam or impounds more than ten acre-feet of water shall submit on a form prescribed by the state engineer detailed plans to the state engineer for approval before construction. If the state engineer finds that the dam design is safe, he shall approve the plans; (permit) This section shall not apply to stock dams whose maximum storage capacity does not exceed ten acre-feet nor any dam which is 10 feet or less in height from lowest natural ground surface elevation.

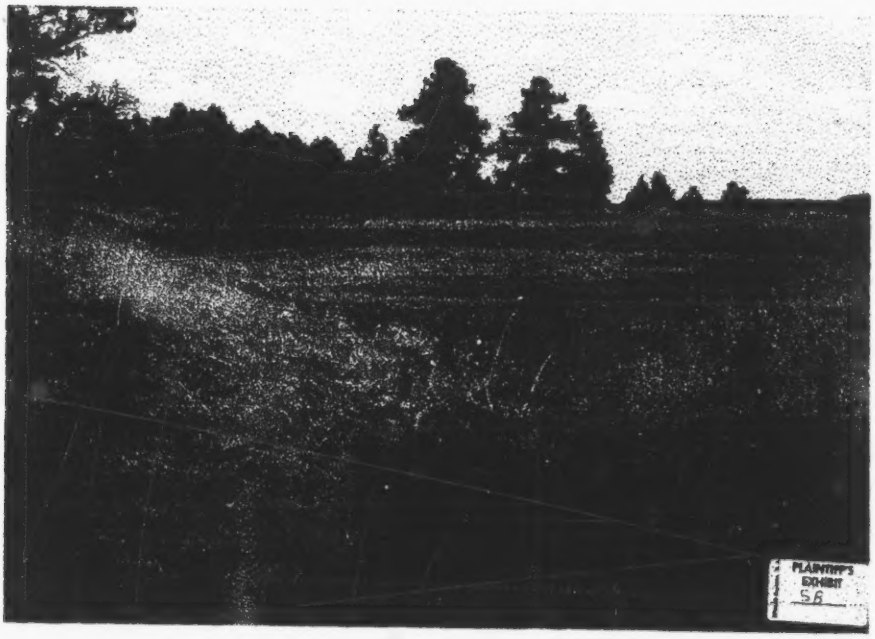


EXHIBIT 12

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF CATRON
STATE OF NEW MEXICO **CV-94-10**

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
FILED
SEP 24, 2001 8:24AM
/s/ Virginia Vivian
COURT CLERK

MICK C. CHAPEL and JENNIFER CHAPEL,
Plaintiffs,

vs.

SUSAN M. NEVITT, NORMA J. NEVITT and DAVID DERRINGER,

Defendants,

FINAL JUDGEMENT AND INJUNCTION

.....

2. David Derringer, Susan Nevitt and Norma Nevitt are HEREBY ORDERED to remove any and all impoundments or obstructions to the free flow of water in Harris Creek within their property, including obstructions at Moonbeam dam and the driveway dam, at their own cost, and without causing downstream damage to the Chapels' property. Defendants are to do so within three months of the date thereof.

.....

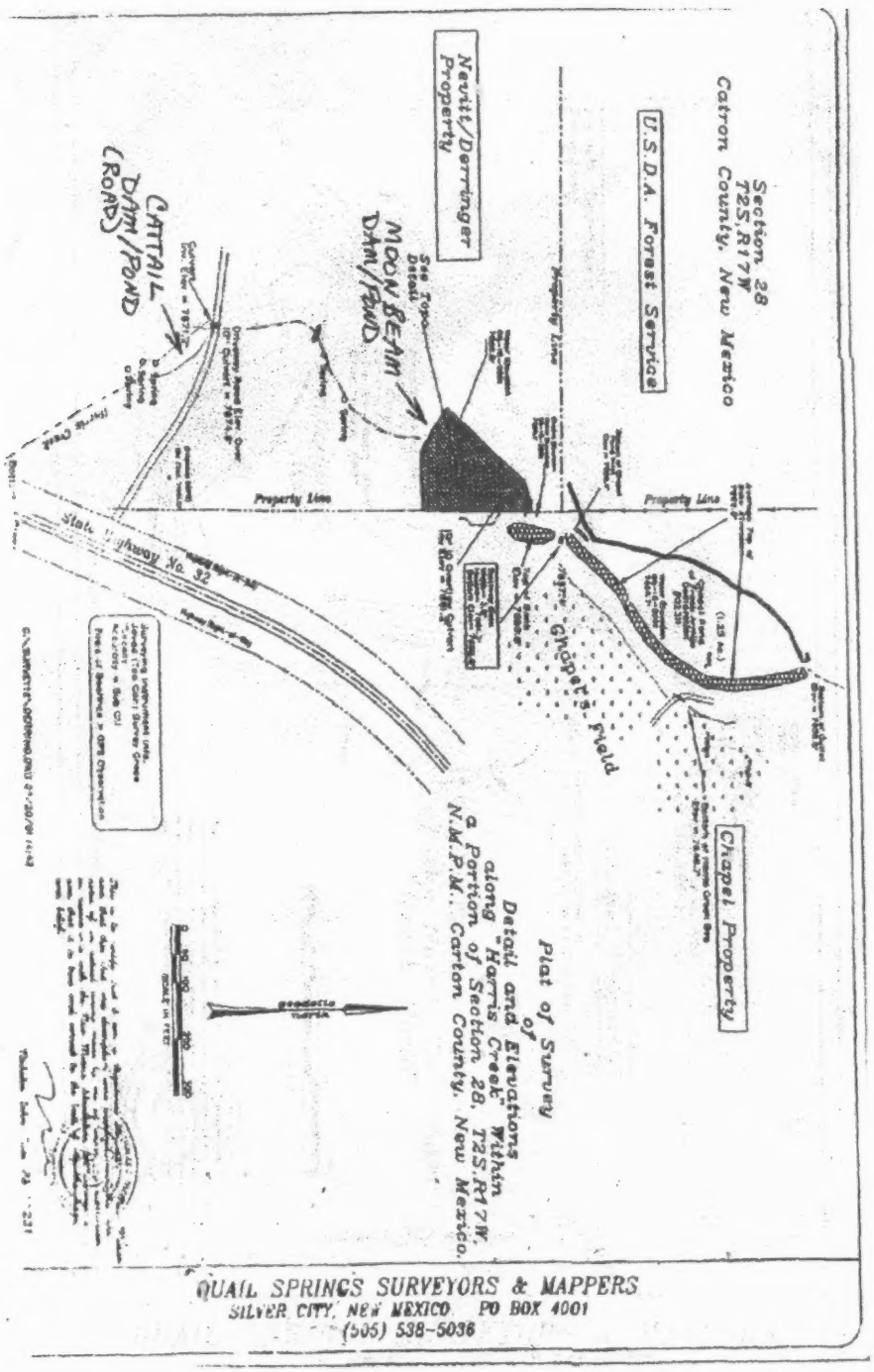
/s/ Thomas G. Fitch

District Judge

EXHIBIT 13

USGS Gallo Mountains East Quadrangle Map

EXHIBITS 14


Section 28
T2S.R17W
Catron County, New Mexico
U.S.D.A. Forest Service
Nevitt/Derringer Property
CATTAIL DAM/POND
MOON BEAM DAM/POND
Property Line
Property Line
State Highway No. 32
Chapel's Field
Chapel Property
Plat of Survey
of
Detail and Elevations
along "Harris Creek" Within
a Portion of Section 28, T2S.R17W,
N.M.P.M., Catron County, New Mexico.
QUAIL SPRINGS SURVEYORS & MAPPERS
SILVER CITY, NEW MEXICO PO BOX 4001
(505) 538-5036

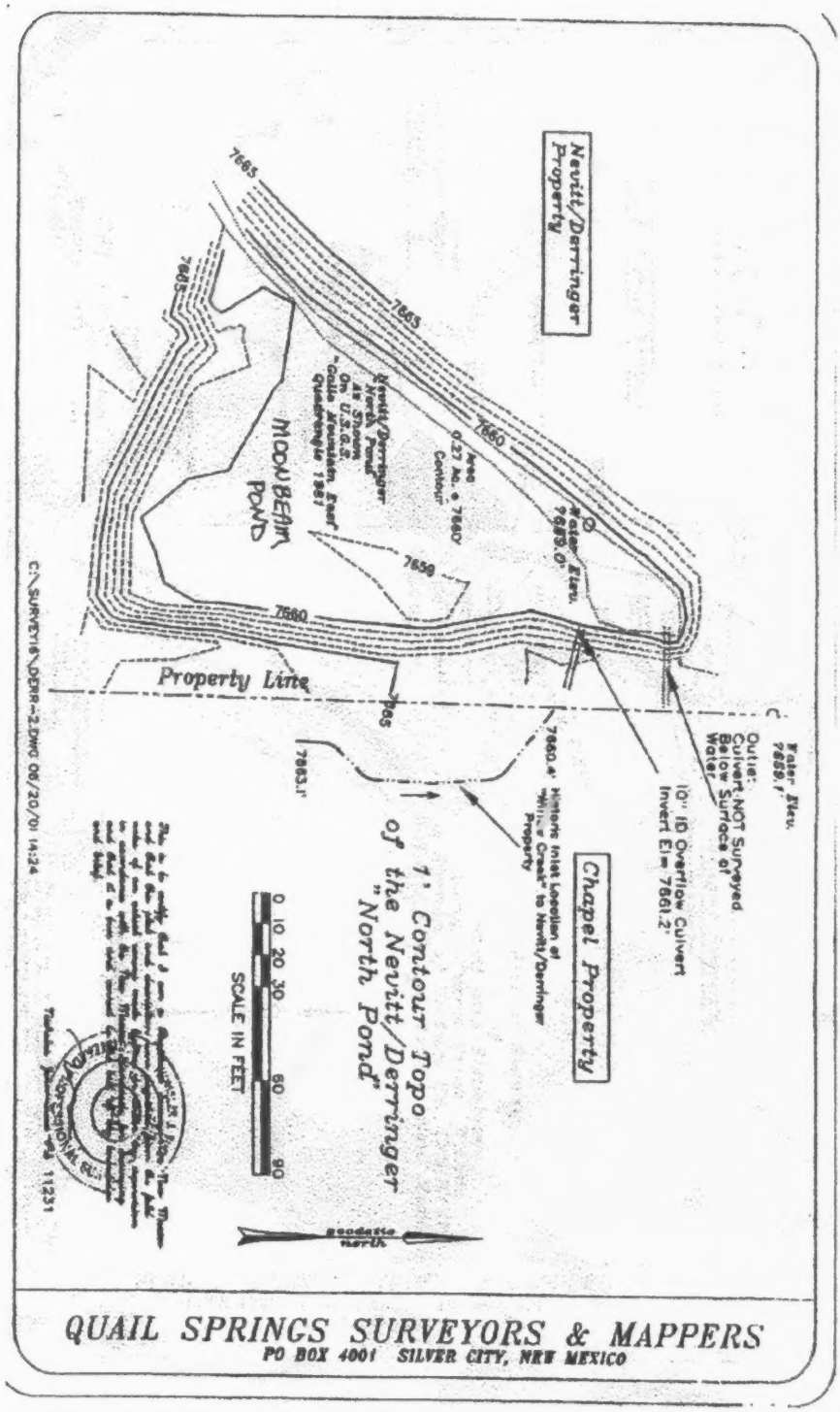

Nevitt/Derringer Property
Chapel Property
MOON BEAM POND
Property Line
7665
7660
7655
7650
7645
Water Elev. 7659.0'
Outlet: Culvert NOT Surveyed Below Surface of Water
10" ID Overflow Culvert Invert Elev 7661.2'
7660.4' Historic Inlet Location of Willow Creek to North/Derringer Property
7663.1'
1' Contour Topo of the Nevitt/Derringer "North Pond"
SCALE IN FEET
0 10 20 30 60 90
QUAIL SPRINGS SURVEYORS & MAPPERS
PO BOX 4001 SILVER CITY, NEW MEXICO
C:\SURVEYS\DERR-2.DWG 06/20/01 14:24

EXHIBIT 15

Engineers Inc. Chapel v. Nevitt

Douglas McLeod Registered Professional Engineer New Mexico 12680 (SEAL) /s/ Douglas McLeod

INV01-022 DATE: 5/3/01

Pond #1 by driveway (cat tail pond) Depth of pond 3.5" deep in cattails.

Pond #2 by Chapel property line measured April 26, 2001

natural streambed not measured (approximately 6" below waterline)

EXHIBITS 16

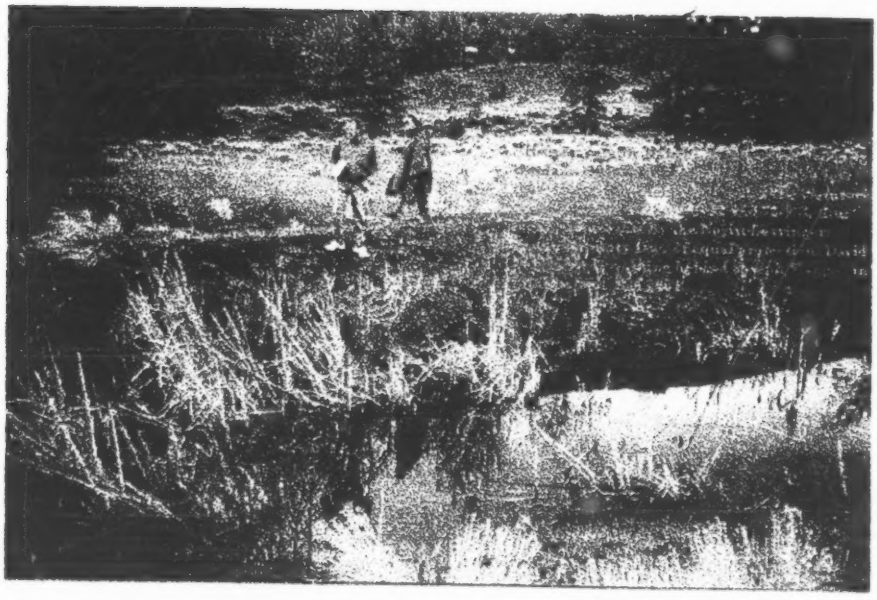


EXHIBIT 17

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
JAN 28, 2003 3:50PM
COURT CLERK

STATE OF NEW MEXICO
COUNTY OF CATRON
IN THE SEVENTH JUDICIAL DISTRICT COURT
No. D-0728 CV 00094-00010
MICK C. CHAPEL and JENNIFER CHAPEL,
Plaintiffs,
vs.
SUSAN M. NEVITT, NORMA
J. NEVITT and DAVID DERRINGER,
Defendants,

DECISION AND ORDER

(Motion to Enjoin Filing of Additional Papers)

THIS MATTER came on before the Court upon the Plaintiff's Motion for Injunction to Enjoin the Filing of Additional Motions, Pleadings, or Other Papers by Pro-Se Defendants. My decision follows:

Plaintiffs seek an injunction against the Defendants enjoining them from filing further complaints, motions, pleadings, discovery requests, or other papers unless the proposed filing is made by an attorney licensed to practice law in the State of New Mexico or has the prior approval of the Court. The Motion does not seek to prohibit Defendants from responding to Plaintiff's motions nor from appealing from the decision arising out of the January 13, 2003 trial.

Plaintiffs rely on Lepiscopo v. Hopwood, 110 N.M. 30 (Ct. App. 1990) and State ex Rel. Bardacke v. Welsh, 102 N.M. 592 (Ct. App. 1985). The conduct of the Defendants is correctly and succinctly documented in Plaintiff's motion. Indeed, another suit not listed in the motion was filed recently by Susan Nevitt in the federal district court. The conduct of Defendants falls within the type of conduct described in Lepiscopo and Welsh. The unusual injunctive relief sought is appropriate in this case.

The relief sought by Plaintiffs is appropriate and will be granted. Plaintiffs are to prepare the injunction.

/s/ Thomas G. Fitch
Thomas G. Fitch
District Judge, Div. II

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MICK CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Appellees, **Ct. App. No. 23,815**
Catron County CV-94-10

v.

SUSAN M. NEVITT, NORMA J. NEVITT, and DAVID DERRINGER,

Defendants-Appellants,

APPELLANTS' MOTION FOR REHEARING BASED ON WILLFUL U.S. 13th and 14th AMENDMENT CONSTITUTIONAL VIOLATIONS OF THE MEMORANDUM OPINION OF JUNE 13, 2003

COMES NOW the Defendants-Appellants pursuant to NMRA 2002, Rule 1-059(A)(B)(E) and Rule 1-060(B)(1)(3)(4), timely within 10 days by certified mail, wherein the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry are violating the Code of Judicial Conduct Canon 3 (B)(2) and the oath of office[8] in the Memorandum Opinion

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[8] "I, Judge _____, do solemnly swear that **I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico**, and that I will faithfully and impartially discharge the duties of the office of Judge on which I am about to enter, to the best of my ability SO

of June 13, 2003, just as did state Judge Thomas G. Fitch, to directly and willfully violate and attack the US Constitution 13th Amendment and the 14th Amendment in sedition and treason of the Defendants-Appellants inherent Constitutional and Civil Rights, to deprive their due process, self representation Pro-Se in the US Courts, and their rights to equal protection of the laws under Title 42 U.S.C. Section 1981(a), and to "enslave" the Defendants with Chapels' violation of state laws with an illegal 14.3 foot dam, of which each justice "swore to God" [**so help me God**] that they would uphold all Constitutions and New Mexico state laws. Such violent attack on the due process and equal protection of the Constitutional laws by these justices mandates their removal from public service under the **Order** of the U.S. Constitution 14th Amendment Section 3.[9] Clearly, the justices will not "stay" CV-94-10 until justice under Constitution is achieved in the federal courts, so that this Courts' own violations of their oath to uphold the Constitutional laws of America can aid and abet Judge Fitch and the Chapels to destroy the Defendants financially, and allow their home and **legal** stock ponds to be destroyed, ruined, and stolen by the Chapels in the interim. These justices, as Judge Fitch, clearly hope that these abhorrent acts, domestic terrorism, and oppression will preclude federal suit against any that defy the

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HELP ME GOD."

9

"US Constitution 14th Amendment Section 3-No person shall be an...elector..or hold any office, under the United States, or under any State, who, having previously taken an oath,... as a judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

Constitutional rights of the Defendants. Undeniably, litigation will occur in federal court to any "persons" within the meaning of Title 42 U.S.C. Section 1983, or judges that disobey the US Constitutional laws and defy Title 42 U.S.C. Section 1986 to "neglect to prevent" Constitutional deprivations, and destroy the private property stock ponds and private roads of the Defendants, which are protected by statutory laws NMSA 1997, 72-5-32, 72-9-3, "equal protection rights" of the 14th Amendment, Title 42 U.S.C. Section 1981(a) and the private property rights of legal structures that a United States citizen is protected from harm or interference by Title 42 U.S.C. Section 1982. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 (1968) No. 645 "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. Congress provided that the right to real and personal property was to be enjoyed equally throughout the United States, and that right was to be secured against interference from any source whatever, whether governmental or private."

The Defendants have a right to have CV-94-10 removed from this biased and unethical state Court of Appeals to a federal court, since the Court of Appeals justices are intent on further and continual violations of the 14th Amendment rights of the Defendants. Section 3 of the Civil Rights Act of 1866 Stat. 27, 28 U.S.C. Section 1443. SEE Virginia v. Rives, 100 US 313, 318 (1880) "In enforcing by appropriate legislation the Fourteenth Amendment guarantees against state denials, Congress has the discretion to adopt remedial measures, such as authorizing persons being denied their civil rights in state courts to remove their cases to federal courts, and to provide criminal and civil liability for state officials and agents, or

person associated with them." **SEE** Monroe v. Pape, 365 US 167 (1961) **SEE** also 42 U.S.C. Section 1985 and 42 U.S.C. Section 1986. This Court of Appeals has "specific intent" to help Judge Fitch violate the 13th Amendment and 14th Amendments against the Defendants' "rights and privileges secured" by the equal protection of the Constitutions of both the United States and New Mexico Article 2 Section 18 and Section 16 under water rights. "The statutory measures designed to eliminate discrimination "under color of law" present no problems of constitutional foundation." United States v. Price 383 US 787 (1966). "laws punishing all conspiracies– with or without state action– that interfere with Fourteenth Amendment rights" "whether or not state officers or others acting under the color of state law are implicated in the conspiracy". United States v. Guest, 383 US 787 (1966) (due process clause) and United States v. Guest, 383 US 745 (1966) (equal protection clause). Thus, the Court of Appeals in the Memorandum Order of June 13, 2003 is an "intent to deprive equal protection, or equal privileges and immunities" to the Defendants by both deprivation of due process in Judge Fitch's and other courts, and to allow the Chapels to violate state laws, and to use those same violations against the Defendants to take the Defendants privileges to enjoy their own statutory rights to stock ponds by the subjugation and enslavement to the Chapels illegal, unconstitutional and jurisdictionally defective Judgement and Injunction of CV-94-10 of May 17, 1996 of which David Derringer and his property were denied due process to fight against the fraud in litigation in open court. "The conspiracy *(of the Court of Appeals working in concert with the Chapels and Judge Fitch to order denial of due process by court order in sedition to the*

14th Amendment, and violation of "equal protection" of state laws 72-5-32 and 72-9-3, and violations of 14th Amendment Constitutional laws to deprive the rights of stock ponds by statutes 72-5-32 and 72-9-3, and to force the Defendants continually before the criminal and biased Judge Fitch in deprivation of the doctrine of fairness of due process) in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all". **SEE** Griffin v. Breckenridge, 403 US 102 (1971) Clearly, New Mexico stock ponds are enjoyed by all New Mexicans except the Nevitt/Derringers due to the illegal control and enslavement of the Chapels, and there are no case laws and no wording in the stock pond statutes 72-5-32 and 72-9-3, that give any authority to the Court of Appeals to deprive, or to allow destruction of the stock ponds to the Nevitt/Derringers by any downstream claim of Chapels to irrigation. Accordingly, the "enslavement" by this Court of Appeals to the criminal and unconstitutional acts of the Chapels using color of state law violations to control the private property of the Defendants, and to steal the Defendants statutory rights to stock ponds by Chapels' own violations of state water laws with an illegal 14.3 foot dam without permit, and this despicable act to be enforced by this Court of Appeals is slavery and unusual and selective punishment, persecution and retribution not allowable by the 13th Amendment of the United States Constitution. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." ; Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject

to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

In short, the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry know they cannot violate the US Constitutional rights of the Defendants and make the Defendants subject to the control of the Chapels, by use of Chapels violations of water law with a 14.3 foot dam in statutory violation, and enter into the Chapel/Judge Fitch conspiracy to destroy the Pro-Se parties rights under US Constitution when the justices "**swore to God**" under state oath that they would never do this to an American, and thus violate the US and NM Constitutional rights of the Defendants with **malice**[10], wherein there is no immunity for these acts of sedition and treason against the US Constitution they swore to protect. **SEE** footnote #1 NM State Oath of Office of justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry that were filed with the New Mexico Secretary of State. U.S. v. McMahon, 562 F.2d 1192 "Gist of offense of conspiracy is agreement among the conspirators to commit the offense, attended by an act of one or more of the conspirators to effect the object of the conspiracy."

INTRODUCTION

Thomas Fitch **swore to God** [**so help me God**] in January, 2003, that he would honor the US Constitution, and the

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Marchbanks v. Young, 139 P.2d 594, 47 N.M. 213 N.M. 1943 "malice" is understood to mean a wrong act done intentionally without legal justification and may be inferred from lack of probable cause."

Constitution and laws of New Mexico.[11] Fitch not only defiles the NM Constitution Article 16 by knowingly allowing the Chapels to have a dam in statutory violation continuously in violation of NMSA 1997, 72-5-32 and 72-9-3, and knowingly helps the Chapels attack the Defendants with their own violation of laws, but as the Defendants continue to litigate Pro-Se, to uncover the Judge Fitch/Chapels criminal and civil conspiracy of fraud and perjury, based upon actions of public corruption of Judge Fitch in racketeering with the Chapels, Fitch realizes that he cannot protect the law violations of Chapels[12] without stopping the Defendants' litigation against

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11

"I, Judge Thomas Fitch, do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico, and that I will faithfully and impartially discharge the duties of the office of District Judge of the Seventh Judicial District Court on which I am about to enter, to the best of my ability **SO HELP ME GOD**." JANUARY, 2003

12

Mick Chapel admitted in CV-94-10 Court testimony of June 14, 1994 and again in deposition of October 12, 1994 that he destroyed the Frank Armijo dam/pond on his property and illegally had built a new dam in 1984 in a different location without the mandated permit and safety engineered design before construction under NMSA 1978, 72-5-32 and 72-9-3. Mick Chapel also admitted that the dam was well in excess of the statutory limit of 10 feet and impounding about twice the statutory limit of water. Hence, Mick Chapel had admitted prior to the trial of CV-94-10 that his dam was not the Frank Armijo dam and was in complete violation of state laws, prohibited by NMSA 1978, 72-5-39 and the NM Constitution Article 16. The State Engineer Memorandum of May 22, 1995 confirmed that the Chapel dam was 14 feet in complete violation of state laws, and that it was not the extinct Frank Armijo dam of Declaration #02311. The Chapels, with the assistance of Judge Fitch lied to the jury in April, 1996 and presented the fraudulent ideas and question #1 to the jury to convince them

them. Accordingly, Thomas Fitch has himself resorted to domestic terrorism to attack the Defendants by phone harassment, sexual harassment, intimidation within the meaning of Title 18 U.S.C. Section 1512 and 373, and violation of rights, in criminal attempts to get the Defendants to "back down" and submit to this public corruption. Thomas Fitch has conducted these egregious acts to stop the litigation against the Chapels in order to protect them, and after the Defendants filed federal suits against Fitch[13], Fitch used his personal attacks, and attacks against the Defendants' property as also a means to stop the litigation against himself in federal court; Fitch hoping that his "power" as a Judge would intimidate the Pro-Se parties to back down, and allow Fitch and the Chapels to ruin their lives and force them from Catron County.[14] In re Rochkind,

---

that the Chapel dam was the same dam as the Frank Armijo dam and that it was less than 10 feet in dam height and impounded less than 10 acre feet of water. Thomas Fitch was both instrumental and conspiratory in this criminal fraud with the Chapels.

13

In 2002 Susan Nevitt filed federal suit Susan Nevitt v. Judge Fitch CIV-02-1580, and after the complete deprivation of due process and equal protection and death threats from Thomas Fitch in January, 2003 filed Susan Nevitt v. Thomas Fitch CIV-03-0155. Due to other violations, and Constitutional deprivations, David Derringer, has also filed federal suits against Fitch on his own behalf. David Derringer v. Judge Fitch et al CIV-02-0974, and David Derringer v. Thomas Fitch CIV-03-0149.

14

Chapels have been documented in drug trafficking, poaching, illegal sales of black market animal parts, and illegal importation of AK-47 rifles to the remote canon of Harris Creek, wherein the only properties are owned by the Defendants and the Chapels. The Chapels have terrorized the Defendants for 9 years including aggravated assault, shooting at the occupied dwelling

128 B.R. 520 Mich. 1991 "To use power of public office as judge to ruin another for personal gain plainly violates several provisions of the Code of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5."

When Thomas Fitch called Susan Nevitt from a pay phone on January 4, 2003 [15] and threatened David Derringer's life with murder in the Catron County jail, upon the planned illegal incarceration by Fitch under the guise of "contempt of court", Judge Fitch had hoped that all Defendants would not appear at the mock trial for Chapels on January 16, 2003, and indeed he succeeded in intimidating Susan Nevitt and her mother, Norma Nevitt, (violations of Title 18 U.S.C. Section 1512) to be too afraid to appear before the man, "Fitch", that had stalked, conducted sexual harassment, and threatened their lives. In re Hey, 193 W. Va. 572, 457 S.E.2d 509 (1995) "Sexual harassment is a proscribed judicial activity." However, as David Derringer still appeared to represent himself, Judge Fitch unlawfully used his courtroom for attempts to "depose" David Derringer over the federal Complaint of sexual harassment and phone harassment Susan

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of the Plaintiff, killing their pets and livestock, criminal trespass, criminal stalking, and death threats and other domestic terrorism. NM State Police Report NMUSP1100. Thomas Fitch is a co-conspirator with the Chapels in attempts to drive out the Defendants so that all criminal acts can go on unimpeded.

15

Judge Fitch admits in open court of CV-94-10 that the allegation of Susan Nevitt in federal Case CIV-02-1580 is that he personally made the death threat phone call on January 4, 2003. Audio record of open court CV-94-10 January 16, 2003: *Judge Fitch: "But there was a suggestion that the court, the judge, myself, had sexually harassed Ms. Nevitt, and there was a more recent allegation that I made a telephone call to her."*

Nevitt had in federal court CIV-02-1580. The audio tapes of the CV-94-10 hearing on January 16, 2003 clearly establish that "Judge" Fitch mis-used his power to intimidate the "Plaintiff's witness" (Susan Nevitt is Plaintiff to Judge Fitch in CIV-02-1580) to Fitch's sexual harassment, by use of his open court in violation of all Rules to illegally attempt to obtain information about federal Case CIV-02-1580 of which Fitch is a Defendant. The audio tapes of January 16, 2003 establish that Judge Fitch attempted to illegally use his courtroom for deposing David Derringer to find any information about the federal law suit Susan Nevitt v. Judge Fitch CIV-02-1580 regarding her: CIVIL RIGHTS COMPLAINT PURSUANT TO 42 USC 1983 FOR VIOLATIONS OF 14TH AMENDMENT RIGHTS, **STALKING AND SEXUAL HARASSMENT**, DEPRIVATION OF DUE PROCESS, VIOLATIONS OF DENIAL OF STATUTORY RIGHTS IN NEW MEXICO DENYING EQUAL PROTECTION, OBSTRUCTION OF JUSTICE, VIOLATIONS OF STATE STATUTES AND NM CONSTITUTION, VIOLATION OF CONSPIRACY AGAINST RIGHTS UNDER TITLE 18 SECTION 241, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, VIOLATIONS OF THE CODE OF JUDICIAL CONDUCT, AND VIOLATIONS OF CIVIL RIGHTS OF PROPERTY OWNERSHIP. On December 19, 2002 Judge Fitch had attorney Sean Olivas represent him in CIV-02-1580, and thus, pursuant to F. LR 83.5 Judge Fitch could not represent himself in any matter regarding CIV-02-1580 including "questioning" a witness to his crime. The following quotes are directly from the audio tapes of the CV-94-10 hearing of January 16, 2003. *Judge Fitch: "May I have appearances please" David Derringer: "I am David Derringer, representing myself Pro-*

Se". Judge Fitch: "Your wife and your mother-in-law are coming-participating today?" David Derringer: "Your honor, I am Pro-Se. I can't represent them since I am not an attorney, but they are physically and mentally incapacitated and could not attend. My mother-in-law Norma Nevitt, however, no longer owns the property in question, and I do have durable power of attorney to represent the property completely for my wife even though she is incapacitated." Judge Fitch: "There are some preliminary matters.." "There were some new allegations made..I kinda believe that was Ms. Norma Nevitt..I'm not sure. But there was a suggestion that the court, the judge, myself, had sexually harassed Ms. Nevitt, and there was a more recent allegation that I made a telephone call to her. Do you have? Are you prepared to put on any evidence on either of those matters Mr. Derringer?" David Derringer: "Your honor, I can't represent anyone but myself". Clearly, Judge Fitch had already established that Norma Nevitt and Susan Nevitt were not present in the courtroom, and even if Susan Nevitt [Plaintiff Pro-Se Federal Case CIV-02-1580] had been present, Judge Fitch could not have asked questions of "witness" David Derringer without Fitch's attorney present over any issues of federal suit CIV-02-1580. **F. LR 83.5 "A party who is represented by an attorney may not personally ...represent himself or herself unless otherwise ordered".** Clearly, in the **established absence** of Susan Nevitt-Plaintiff of CIV-02-1580, Judge Fitch believed that he could use his power as Judge to intimidate "witness" David Derringer (David Derringer is a witness to the sexual harassment of Susan Nevitt by Thomas Fitch) in the open courtroom of Catron County Case CV-94-10, to divulge information regarding the Federal Complaint of

his own personal federal suit CIV-02-1580, wherein Fitch is Defendant. This constitutes ex-parte communication in violation of Rule 16-402, with the witness of federal court in the absence of the "Plaintiff". In re Starcher, 193 W.Va. 470, 457 S.E.2d 147 (1995) This clearly violated **federal Rules**, Code of Judicial Conduct Canon 1-3, 4(A)(1)(2)(3), 5, 6, and mis-use of power and authority of a Judge without jurisdiction or judicial capacity to violate federal Rules; illegal and continual "personal" and "extra-judicial" mis-use of power. In re Vandlinde, 179 W. Va. 183, 366 S.E.2d 631 (1988).

When the terrorism and intimidation from Thomas Fitch did not seem to be stopping the **legal** Pro-Se representation of the Defendants of CV-94-10, Thomas Fitch decided to further violate his oath of office, Code of Judicial Conduct and attack the Defendants with a direct denial and deprivation of the rights of due process and equal protection of the US Constitution 14th Amendment, and to "enslave" them to his court in violation of the US Constitution 13th Amendment, and continually subject the Defendants to the abuse of process and malicious prosecution of the Chapels with Fitch's help; a clear violation of the US Constitution 13th Amendment, by ordering them to "ask Fitch" whether they could have due process at any time; clearly a totalitarian dictatorship controlled by unethical Fitch. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." ; Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any

law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

Fitch cleverly believed that he could both assist the continued fraud of the Chapels and help himself at the same time stop the federal litigation against himself, by simply mis-using his powers as Judge to "order" the Defendants to stop litigation in any court in the United States, by himself putting a stop to it, or threatening to throw them in jail (*as he had already planned to kill David Derringer in the Catron County jail by food contamination or other "accidental death"*) for "contempt" of his "order" denying their rights to "file complaints, motions, pleadings, discovery requests, or other papers" and his clever attempt to stop them financially by "ordering" no available Pro-Se adversarial litigation to be further available for them. He slyly placed in his order that they had to have the "prior approval of the court" and since he was the Judge, that refused to recuse under the mandates of Rule 1-088.1(D), knew that he had the Defendants "contained" in his court for any further abuse he could perpetrate upon them, with no ability of their escape to a fair or equitable court or judge. US v. Griffin, 84 F.3d 820 amended CA7 (Ill.) 1996 "Judge should be disqualified from proceeding where circumstances raise reasonable questions about his or her impartiality, regardless of his or her state of mind or ability to conduct fair and impartial trial." ; US Citizen. State v. Marden, 673 A.2d 1304 Me. 1996 "No judge should preside in case in which he is not wholly free, disinterested, impartial and independent."; Purpura v. Purpura, 847 P.2d 314, 115 N.M.80 cert denied 847 P.2d 313, 115 N.M. 79 "N.M. Ct. of Appeals 1993 "If judge becomes so embroiled in controversy that he or she is unable to make fair and objective decision, judge must recuse himself

or herself. SCRA 1986 1-011, SCRA 1986, Canons 21-300 Subd. A(3) 21-400"; Petition of Wittrock, 649 A.2d 1053 (Del.) Supra. 1994 "Every litigant is entitled to be heard by a disinterested judge."

This diabolical plan was complete when Judge Fitch entered the Decision and Order of January 28, 2003 wherein Fitch has acted to subvert and attack the US Constitution 14th Amendment, and to attempt to set New Mexico Case laws against the rights of US citizens to have equal protection, due process and self representation in the courts of the United States. Clearly, as the January 28, 2003 "order" shows, Judge Fitch attempts to mis-use his powers to defy and deprive US Constitutional rights, and to mis-use his powers to "order" a stop to the federal litigation against himself. [*page 1 "order"- "Indeed, another suit not listed in the motion was filed recently by Susan Nevitt in the federal court". This directly references Susan Nevitt v. Judge Fitch Federal Case CIV-02-1580 wherein Judge Fitch attempts to save himself, his own financial assets, and his position, by ordering Susan Nevitt not to litigate against his criminal and unconstitutional acts against the United States Constitution*]

In sum, this Court of Appeals only had to answer one question before they ruled in Memorandum Opinion of June 13, 2003 and that is: Whether they were going to uphold all US Constitutional Rights of due process and equal protection, and uphold the New Mexico Constitution Article 2 Section 18 in due process and equal protection, and uphold NM Constitution Article 16 and statute 72-5-39 as the NM Mexico State oath of office mandated, to support the US Constitution concerning "equal protection", as the Court of Appeals justices had sworn

to God that they would uphold the Constitutions and state laws; or to violate and then unconstitutionally attack the clearly established Defendants' rights under the US Constitution 13th and 14th Amendments to attempt to subvert, remove, defile, subjugate, enslave and oppress any American's rights to Pro-Se representation, due process, and equal protection, freedom, liberty, Civil Rights, a fair and impartial judge and court, and to instead enter into the criminal and civil conspiracy with the Chapels and Judge Fitch to continue to allow Chapels to violate state laws with a 14.3 foot dam and use that violation to enslave and deprive the Defendants? The answer to this question under US Constitutional law was that the justices of the Court of Appeals could **absolutely not** violate the US and NM Constitutional laws or allow water statutes to be violated by Chapels to cause involuntary servitude against the Defendants. Yet the Memorandum Opinion of June 13, 2003 attacks the US Constitution and all that America stands for, in order to ignore and subjugate all Constitutional and state water laws so that Chapels can prevail, in direct defiance of state oath, Code of Judicial Conduct Canon 3 (B)(2) and the ethics of a Judge to uphold, treasure, protect, and defend the US Constitution against all enemies foreign or domestic, or be immediately removed from public office forever under the **ORDER** of the US Constitution 14th Amendment Section 3. *Canon: "Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us."* Such attack on the US Constitution mandates all salaries be

stopped,[16] for such decisions against the 14th Amendment, by the mandates of the 14th Amendment itself Section 4. Tucker v. Outwater, 118 F.3d 930 cert denied 118 S. Ct. 562, 522 US 997, 139 L.Ed.2d 402 "Judge will be **denied immunity for damages where he acts in clear absence of all jurisdiction, and knew or must have known that he was acting in such manner.**"

To take 14th Amendment rights of due process, equal protection of all laws, and the inherent rights of an American to represent themselves Pro-Se in any United States court of law is overstepping both jurisdiction and judicial capacity and entails such orders as an **ENEMY OF THE UNITED STATES** when a direct attack is made on the US Constitution 13th and 14th Amendment, when any justice attempts to set case laws **against** the US Constitution. The Memorandum Order of June 13, 2003, in fact became "mistake", "fraud" and would be "void" by Constitutional law under Rule 1-060(b)(1)(3)(4) wherein this Court of Appeals assisted the criminal Fitch to attempt to set case laws against the United States Constitution 13th and 14th Amendments. Such sedition is not unlike a **traitor, betrayer, and revolutionist** within the meaning of the US Constitution 14th Amendment Section 3 against the foundation of America as any foreign terrorist during "911" that tried to subvert, and attack the meaning of the United States of

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14th Amendment Section 4: "But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

America.

ARGUMENT

This court is well aware of all case laws that mandate the recusal of Judge Fitch, simply to allow the Defendants an impartial judge and a fair trial in a court of law in these United States, and yet the Court of Appeals desires Judge Fitch to continue to be able to persecute the Defendants as this Court is now doing in violation of the 14th Amendment. Beal v. Reidy, 80 N.M. 444, 457 P.2d 376 (1969) "Prejudiced or biased judge would deprive party of due process of law."; Petition of Wittrock, 649 A.2d 1053 (Del.) Supra. 1994 "Every litigant is entitled to be heard by a disinterested judge." The case record of CV-94-10 is overflowing with factual basis of "personal" and "extra-judicial" reasons for recusal of Judge Fitch, as well as the mandated removal due to Code of Judicial Conduct and Constitutional violations requiring recusal under Rule 1-088.1(D) *"No judge shall sit in any action in which his impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, and shall recuse himself in any such action."* Clearly, to any rational being, violating the 14th Amendment of the US Constitution with direct "Order" to deprive rights and privileges is a violation of the NM Constitution and the Code of Judicial Conduct. State ex rel Stratton v. Sinks, 106 N.M. 213, 220, 741 P.2d 435, 442 (Ct. App. 1987) "substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion". All documents and testimony concerning the recusal matters are ignored by this Court of Appeals to illegally support a District state Judge in bias and prejudice. US v. Griffin, 84 F.3d 820 amended CA7 (Ill.) 1996

"Judge should be disqualified from proceeding where circumstances raise reasonable questions about his or her impartiality, regardless of his or her state of mind or ability to conduct fair and impartial trial."; In re Doe, 519 P.2d 133, 86 N.M. 37 "N.M. App. 1974 Failure to hear one party's evidence, when offered, establishes a presumption of prejudice." This court ignores Fitch's fraudulent transfer of the Defendants' real property, the direct involvement of Judge Fitch with both Plaintiffs and Defendants before CV-94-10, and state that it is not bias to allow Judge Fitch to continue to assist the Chapels in stealing the Defendant's property as done by himself as a past real estate attorney, by the proven fraud in his courtroom, even though in violation of the US Constitution. **SEE** Code of Judicial Conduct 21-400(A)(1). Martinez v. Carmona, 624 P.2d 54, 95 N.M. 545 writ quashed 624 P.2d 535, 95 N.M. 593 "N.M. Court of Appeals 1980 Judge may be disqualified for statutory, **constitutional**, or ethical cause-Code of Judicial Conduct, Canon 3 Subd. A, Constitution Article 6, Section 18." Clearly, the court record shows a bias and prejudice of Judge Fitch due to conspiracy with Chapels, and the Catron County public corruption of assisting Chapels fraud and racketeering endeavors, that are a personal extra-judicial source, that this court ignores to protect the comradery of judges.

It is without doubt that Judge Fitch intends to stop all due process in America for the Defendants-Appellants with his orders of January 28, 2003 and again on February 12, 2003 wherein it is ordered: Defendants are enjoined "from filing further **complaints, motions, pleadings, discovery requests, or other papers**" and to unconstitutionally prohibit the Defendants from self representation Pro-Se in the courts of the

United States; a clear violation of Canon 3 (B)(2). It is clear that the criminal Fitch has no intention of ever granting any request for due process pleadings from the Defendants in his court, as his deprivations of due process are intended for the Chapels to continually sue the Defendants with their illegal dam, and win illegal damages until the Defendants are obliterated from this state in Constitutional violation. Judge Fitch has illegally used his power as judge to attempt to stop the federal litigation against him Susan Nevitt v. Judge Fitch federal Case CIV-02-1580 by his "order" of January 28, 2003 wherein he directly references his own **PERSONAL federal case as a reason** to deny due process to Susan Nevitt. The only federal suits in federal court from Susan Nevitt are Susan Nevitt v. Judge Fitch CIV-02-1580 and Susan Nevitt v. Thomas Fitch CIV-03-0155.

Therefore, this Court of Appeals condones, aid and abets the direct attack on the US Constitution 13th and 14th Amendment by Judge Fitch, and gives illegal aid and comfort to Judge Fitch as an enemy of the United States, to deny due process for **PERSONAL** reasons; an attack thereof of the NM Constitution Article 2 Section 18, and both Constitutions of which each justice "**swore to God**" to protect and ensure compliance. Hence, this Court of Appeals knows that Judge Fitch was not simply attempting to "limit pleadings by excessive pages" but intends to destroy the ability of the Defendants-Appellants to "fight back" against the criminal onslaught of the Chapel/Judge Fitch conspiracy, by making it impossible for the Defendants to litigate against the Chapels in their own defense as mandated available under the

Constitutions, and to illegally attempt to protect his own financial resources against Susan Nevitt and David Derringer in federal court. Clearly, this Court of Appeals is intent on aiding the United States enemy of the Constitution for Judge Fitch to succeed in denial of a fair court of law to present any evidence of defense, and condones Fitch's non-compliance with the Rules of Civil Procedure Rule 1-088.1(D) so that the Defendants can be enslaved to Fitch's totalitarian dictatorship over them in violation of the 13th Amendment, preventing the Defendants "self defense" of their own property by use of their US Constitutional rights under the 14th Amendment, Title 42 U.S.C. Section 1981(a) and the NM Constitutional rights under Title 2 Section 18. Hence, these Court of Appeals justices, as Judge Fitch, are subversive, within the meaning of violations of Rules 21-300(2)(5)(7), and are criminally involved with Fitch in insurrection and rebellion against the US Constitution 13th and 14th Amendment, and against the NM Constitution Article 2 Section 18, to steal the due process and equal protection from the Defendants, so that the Chapels can continue to violate state statutes 72-5-32 and 72-9-3 with a statutorily violating dam of 14.3 feet without permit, and without the engineered safety design before construction, in total violation of 72-5-39 and the NM Constitution Article 16, and to allow the Chapels to subjugate, enslave, and cause involuntary servitude of the Nevitt/Derringers to destroy their private property rights for legal stock ponds, and their road of necessity to their home, all located on private property outside of the jurisdiction of Judge Fitch, Chapels, and the justices of this Court of Appeals by the mandates of Title 42 U.S.C.

Section 1982. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding." Such Memorandum Opinion of June 13, 2003 and all involved justices are treacherous, and revolutionary, and are enemies of the United States in sedition, treason, and insurrection of the US Constitution, and subject to direct removal from public office under the 14th Amendment Section 3, and subject to Civil Rights suit under Title 42 U.S.C. Section 1983 and Title 42 U.S.C. Section 1986 without judicial immunity, since the US Constitution was "**sworn**" to be upheld by such justice in each oath of office filed with the New Mexico Secretary of State. **SEE** United States Constitution 14th Amendment Section 3.

The Memorandum Opinion of June 13, 2003 violates not only the 14th Amendment of due process and equal protection of the laws and under Title 42 U.S.C. Section 1981(a), but also violates the 13th Amendment of the US Constitution by taking the rights of the Defendants to have operational stock ponds under NMSA 1997, 72-5-32 and 72-9-3 wherein the Court of Appeals cannot establish any case laws, nor any wording in the statutes 72-5-32 or 72-9-3 that could be meant to enslave and subjugate the Defendants-Appellants to the illegal CV-94-10 injunction of the Chapels claim of a downstream water right for irrigation, or prevent the Defendants from their legal stock ponds under the "equal protection" of the 14th Amendment, Title 42 U.S.C. Section 1981(a), and the New Mexico Constitution Article 2 Section 18.

The Court of Appeals contends to protect a fellow Judge that

has been involved in criminal acts including sexual harassment, criminal stalking, death threats, intimidation, and telephone harassment, and will not accept the court record documents or the witness testimony of the Defendants, but instead accepts the complete lack of evidence of Chapels' claims to water impoundment with no photographs of water on the Defendants' property, and only the "testimony" in perjury of Mick Chapel[17]. Dugger v. Young, 25 N.M. 671, 187 P.552 (1920) "A denial of facts in the complaint..raises an issue of fact, and the **burden is upon the plaintiff to prove his case."** Although the burden of proof is on the Chapels to prove a violation and the only substance is Mick Chapel's perjury on the witness stand on January 16, 2003, this Court of Appeals accepts the opposition testimony to accuse and deprive Constitutional and statutory rights of the Defendants, and yet accepts no truth, testimony, circumstantial evidence, and **documentary evidence** from the Defendants to Chapels water violations, the plan to jail and murder David Derringer, and to enslave the Nevitt/Derringer's private property to the illegal dam of the Chapels, and to take the Defendants rights to stock ponds in violation of equal protection of the laws 72-5-32 and 72-9-3. Clark v. Apex Gold

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Since Mick Chapel admitted to his dam and pond being much greater than 10 feet and impounding more than 10 feet of water in court testimony of June 14, 1994 and again in deposition of October 12, 1994, and since it was proven in OSE Memo May 22, 1995 that Chapels' dam was 14 feet, when Mick Chapel has lied to all courts in the trial of April, 1996 of CV-94-10 and beyond that his dam is the extinct Frank Armijo dam/pond his admitted to destroying in 1984 and lies that his dam is "less than 10 feet and impounds less than 10 acre feet of water", there is no doubt of the criminal perjury of Mick Chapel under NMSA 1963, 30-25-1.

Mining Co. 13 N.M. 416, 85 P. 968, 6 L.R.A. 793 (1906) "A denial that the defendant has not "knowledge or information sufficient to form a belief" is sufficient to put the plaintiff to the proof of the material fact." This Court of Appeals, in bias and violation of Constitutional rights, disavows the evidence and all Constitutional, statutory, and case laws on the side of the Defendants, to use the lack of evidence, willful Constitutional violations, statutory water law violations, and proven fraud and perjury of the Chapels[18] on the side of the Chapel/Judge Fitch conspiracy to continue to persecute the Defendants. In re A.tl Robins Co. Inc., 97 BR 525 ED.Va 1995 "Bias" is condition of mind, which sways judgement and renders judge unable to exercise his functions impartially in particular case." ; In re Doe, 519 P.2d 133, 86 N.M. 37 "N.M. App. 1974 Failure to hear one party's evidence, when offered, establishes a presumption of prejudice."

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It is admitted in court record and in Deposition of Mick Chapel in 1994, long before the trial of CV-94-10 in April, 1996, that the Chapel dam was not the Frank Armijo dam, and that it was in statutory violation of over 10 feet and impounding over 10 acre feet of water. Additionally, on May 22, 1995 the State Engineer proved the Chapels' dam not the Frank Armijo dam and that it was 14 feet without permit and without the mandated engineered design before construction in violation of 72-5-32 and 72-9-3. This Court of Appeals ignores the proven fraud and perjury of Chapels in CV-94-10 and additionally condones the violation of state law 72-5-39 and the New Mexico Constitution Article 16 that forbids the Chapels to keep a dam in statutory violation. Hence, the Court of Appeals is equally as corrupt against the state water laws as Judge Fitch, knowingly allowing Chapels to violate water law when the Constitution Article 16 prohibits these acts, as does the oath of office of all justices. **NMSA 1997, Repl. Pamp., 72-5-39, "No person shall use the public waters of the state of New Mexico except in accordance with the laws of the state of New Mexico.**

As pointed out in all case laws and the United States Constitution 14th Amendment, David Derringer could not be precluded from CV-94-10 in the original trial of 1996 and his property illegally seized with the jurisdictionally defective Judgement and Injunction of May 17, 1996, without the Case CV-94-10 being jurisdictionally defective, illegal, and unconstitutional. Holguin v. Elephant Butte Irrigation District, 91 N.M. 398, 575 P.2d 88 (1977) Without the proper parties involved in the suit, the case has the defective inability to proceed and must be dismissed.; E.G. Perez v. Gallegos, 87 N.M. 161, 530 p.2d 1155 (1974); Richins v Mayfield, 85 N.M. 578, 514 p.2d 854 (1973) "Rule 19 does not expressly state whether such an inability to proceed is a jurisdictional defect, but we have always held that it is."; State Farm Mut. Auto. Ins. Co. v. Foundation Reserve Ins. Co., 78 N.M. 359, 431 P.2d 737 (1967) "New Mexico makes no distinction between necessary and indispensable parties; if person's interests are necessarily affected by judgement, such person is indispensable party."; Richins v Mayfield, 85 N.M. 578, 514 p.2d 854 (1973) "failure to join an indispensable party renders the suit defective."; Holguin v. Elephant Butte Irrigation District, 91 N.M. 398, 575 P.2d 88 (1977)"Without an indispensable party before judgement, this is a jurisdictional defect making the case inherently defective, and the "supreme court has always held that it is". ; Montoya v. Department of Finance & Administration, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982)"the non-joinder of a party will result in the dismissal of a cause of action, where the party's absence will prevent the court from granting complete relief, significantly impair the interests of the absent party or expose litigants to possible multiple liability or inconsistent obligations."; Herrera v. Springer Corp. 85 N.M. 6, 508 p.2d 1303 (Ct. App. 1973). "The court cannot proceed upon to judgement in the absence of any

indispensable parties". The Court of Appeals wishes to ignore these case laws and the US Constitution 14th Amendment to keep the Chapels' illegal claim to water and the wrongful Injunction denying the equal protection rights of the Nevitt/Derringers to legal stock ponds intact, but cannot as a matter of Constitutional, case, and statutory laws that the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry are bound to under the Code of Judicial Conduct Canon 3 (B)(2). Accordingly, as David Derringer's statutory rights to stock ponds were stolen from him in CV-94-10 without opportunity to be heard, and his property illegally seized by CV-94-10 Judgement of May 17, 1996 of which he was a **NON-PARTY.** this Court of Appeals wishes to protect Chapels and the Judge Fitch Judgement and Injunction of May 17, 1996 by violation of David Derringer's 13th and 14th Amendment rights by "enslaving" him and his property to this illegal act, but cannot by the mandates of the Code of Judicial Conduct Canon 3 (B)(2) wherein this Court of Appeals has to abide by the 13th and 14th Amendment and the case laws of the Supreme Court of New Mexico. Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action."; Allen v. McClellan, 77 N.M. 801, 427 P.2d 677 (1967) "No court can make a decree which will bind anyone but a party; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen." This Court of Appeals attempts to protect both the Chapels and Judge Fitch as to imposing all of the responsibility to David Derringer to "notify"

the court of his claim to an interest in the property prior to the trial of 1996. However, it was well known to Judge Fitch, that had personally visited the Nevitt/Derringer property in 1995, had conducted illegal "ex-parte" communication of "mediation" in 1996 before trial and was well aware of David Derringer as an owner to the property, and very well known to the Chapels with OSE Derringer v. Chapel May 22, 1995 involvement of David Derringer, that David Derringer became a property owner 7 months before trial in September of 1995. Thus, this Courts' "protection" of the Chapels and Judge Fitch is in violation of case law mandating Chapels to have David Derringer present as necessary and indispensable property owner. United States Fid. & Guar. Co. V. Raton Natural Gas Co., 86 N.M. 160, 521 P.2d 122 (1974) "Where party seeks relief from court of equity, he must have before the Court all parties whose rights may be affected by relief sought." Judge Fitch was bound under oath of office, and under the mandates of the Code of Judicial Conduct Canon 3 (B)(7), and Rule 19, that Ordered Judge Fitch to have made David Derringer a Defendant before the trial of April, 1996 or dismiss the suit as defective in parties. **Rule 1-019(A)(1)(2)(2b) "If he has not been joined, the court shall order that he be made a party."** Krametbauer v. McDonald, 104 P.2d 900 44 N.M.473 "Defect of parties means too few, not too many, so that non-joinder and not misjoinder is ground for defect of parties."; E.G. Perez v. Gallegos, 87 N.M. 161, 530 p.2d 1155 (1974); Richins v Mayfield, 85 N.M. 578, 514 p.2d 854 (1973) "Rule 19 does not expressly state whether such an inability to proceed is a jurisdictional defect, but we have always held that it is." Since CV-94-10 dealt with "water" and "water rights" that are inherent with property ownership, there

is no way that David Derringer could have been left out of CV-94-10 in the trial of April, 1996, and thus it is jurisdictionally defective as a matter of law. KRM Inc. v. Caviness, 122 N.M. 389, 925 P.2d 9 (Ct. App. 1996) "The statutory exception links ownership of the land with water rights." The Court of Appeals claims to acknowledge that the Defendants pointed out the case laws that mandates CV-94-10 be dismissed as a matter of law as jurisdictionally defective, but ignore them to protect the Chapels and Judge Fitch and to deny the 14th Amendment rights of the Defendants. Accordingly, the "responsibility" to ensure that David Derringer was a named party Defendant before the trial of April, 1996 of CV-94-10 was equally accountable by Judge Fitch under Rule 19 and Canon 3 (B)(7) and the Chapels, to ensure that all persons were present for just adjudication so that the Defendants' property rights were not impaired by inability to protect that interest, and wherein it would leave Chapels subject to collateral attack from David Derringer in future litigation. Judge Fitch and the Chapels and this Court of Appeals all intend to stop David Derringer's rights of due process to collaterally attack the Judgement and Injunction of May 17, 1996 wherein he was a **NON-PARTY**, by keeping David Derringer from litigation of the Chapels' illegal dam and the wrongful and unconstitutional injunction depriving the statutory rights of the Nevitt/Derringers under "equal protection" of the laws 72-5-32 and 72-9-3 to have their already "legal" stock ponds. Wisdom v. Kopel, 95 N.M. 513, 623, P.2d 1027 (Ct. App. 1981) "Jurisdictional issue may be raised in collateral attack after the judgement has been entered." Such "conspiracy against rights" pursuant to Title 42 U.S.C. Section 1985 and

Title 42 U.S.C. Section 1986 is both illegal and unconstitutional under the 13th , 14th Amendment and Title 42 U.S.C. Section 1981(a).

The Court of Appeals refuses to read the court record in the year 2000, wherein David Derringer Motioned the Court of CV-94-10 to enter as "Defendant" properly under Rule 19, and was denied illegally by Judge Fitch in violation of Rule 19 and the Code of Judicial Conduct Canon 3 (B)(7), and only entered illegally as "intervenor" under Rule 1-024 in order to keep the Chapel Judgement and Injunction of May 17, 1996 intact by unlawfully subjugating and enslaving David Derringer to that illegal act. Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action." This Court of Appeals is bound to the case law of the NM Supreme Court under Canon 3 (B)(2) and not to the illegal acts of deceit of Judge Fitch in CV-94-10 erroneously claiming to hide under the doctrine of res judicata or the law of the case. Alexander v. Delgado, 84 N.M. 717, 507 P.2d 778 (1973); State v. Sedillo, "it appears that the Supreme Court necessarily decided the issues underlying the claim." ; **"The Law of the Case should not be used to accomplish an obvious injustice, or applied where a previous decision clearly, palpably or manifestly was erroneous or unjust." "Where there is manifest injustice to one party, with an erroneous decision, it should be disregarded and set aside."** New Mexico Supreme Court Opinion No. 1998-NMSC-031 No. 18,296 consolidated with: No. 19,118 (Sept 8th, 1998).; **"law of the case won't be used to uphold a clearly erroneous decision"**. Advance Opinions, New Mexico Supreme Court, Vol. 37, No.

44, October 29, 1998.

This Court of Appeals defies and disregards the case law NMSA 1978, 72-5-39, (with punishment under NMSA 1978, 72-8-4, 72-8-6, and 72-12-11) and the New Mexico Constitution Article 16, so that Chapels can continue to keep and use their dam which has been clearly proven and documented to be in violation of state laws 72-5-32 and 72-9-3[19]. Chapels cannot have a 14.3 foot dam in violation of state laws, no matter how much this Court of Appeals intends to illegally protect them. The Constitution of New Mexico Article 16 prohibits any use of New Mexico waters while in violation of any statute, the statute NMSA 1978, 72-5-39 prohibits any use of New Mexico waters while in violation of state statutes, all case laws of New Mexico and federal laws prohibit any use of New Mexico waters while in violation of state statutes, and the Chapels are mandated to comply with all statutes whether they have a CV-94-10 judgement and injunction or not. State ex rel. Reynolds v. South Springs Co. 80 N.M. 144, 452 P.2d 478 (1969) "Owner of water right has duty to comply with law."; Little v. Price, 74 N.M. 626, 397 P. 2d. 15 (1964) "Defendant who built a dam without obtaining the permit required hereunder (NMSA 1978, 72-5-1)...was liable for damage". Thus, despite the penchant of this Court of Appeals to protect the Chapels violations with a 14.3 foot dam, the Court of Appeals cannot violate all Constitutional, statutory and case laws to protect the Chapels' violation of water laws with a 14.3

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To violate 72-5-32 and 72-9-3 to construct a 14.3 foot dam without permit, and then use public waters from the impoundment pond for irrigation without permit also violates 72-5-1, 72-5-24 and 72-5-39.

foot dam without permit and without the mandated safety engineered design before construction because of the oath of office filed with the New Mexico Secretary of State (see footnote #1), the Code of Judicial Conduct Canon 3 9B)(2) "A judge shall be faithful to the law" as defined by Canon: ***Canon: "Law" "denotes court rules as well as statutes, constitutional provisions, and decisional law."*** and the mandates of the New Mexico Supreme Court that no-one can use New Mexico public surface water in violation of state statutes. State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be." So this Court of Appeals cannot ignore the Chapels violations of state water laws and allow the use of these violations against the Constitutional rights of the Defendants due to the 14th Amendment of the United States Constitution that the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry "**swore to God**" under state oath that they would protect and enforce the "**EQUAL PROTECTION**" of all laws. Clearly, singling out the Chapels as available to violate state laws and to enslave the Nevitt/Derringer private property with their illegal 14.3 foot dam is no equal protection of the laws for the Nevitt/Derringers, nor any other citizen of New Mexico under the NM Constitution Article 2 Section 18. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951): "The statutory manner of securing rights to use water for irrigation is exclusive, and no right to use of water is obtained by use in violation of the statutes." The Chapel's claimed rights to Harris Creek waters was illegally

litigated in 1996 in jurisdictional defect, and the Chapels obligations to comply with state statutes are ongoing and decisive, and separated from that litigation by Constitutional provisions of Article 16 and the mandates of statutory law NMSA 1978, 72-5-39, and the case laws that have to be enforced by this court that statutory water mandates are "exclusive" and Chapels are not exempt by Constitutional orders of "equal protection" of the laws by state case CV-94-10. The attempt of the Court of Appeals to circumvent the Constitution of the United States and of New Mexico not only violates oath of office and the Code of Judicial Conduct Canon 3 (B)(2)(5), but will precipitate federal suits or class actions regarding illegal use of the public waters of New Mexico by the Chapels with the illegal "endorsement" of this court in violation of all laws. Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43 U.S.C.A. 372 et seq.; Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) "State controls water use because it does not part with ownership; it only allows a usufructuary right to water."

This Court of Appeals erroneously decided that the Constitutional rights of the Defendants to stock ponds is not relevant to an illegal and jurisdictionally defective Injunction depriving those statutory rights under CV-94-10. The US Constitution 14th Amendment and Title 42 U.S.C. Section 1981(a) disagree with the Court of Appeals, for any right, statute, Constitutional provision, or privilege guaranteed to any

American cannot be denied by any state or the enforcement of any law that will deprive any person of property or the equal protection of the laws. Since the rights and privileges of NMSA 1978, 72-5-32 and 72-9-3 insure that every New Mexico citizen can have stock ponds that are under 10 feet and impound less than 10 acre feet of water, the Nevitt/Derringers are guaranteed the use of stock ponds, or to make new stock ponds, as proclaimed by NMSA 1978, 72-9-3 without any wording or intent of the New Mexico legislature to subjugate these statutes under any claim of downstream irrigation rights. Hence, under the US Constitution 14th Amendment, Title 42 U.S.C Section 1981(a), and the New Mexico Constitution Article 2 Section 18, the Nevitt/Derringers are entitled to the "equal protection" of the rights to legal stock ponds without the jurisdiction or "enforcement of any CV-94-10 case law" which intends to **abridge the privileges or immunities** of citizens of the United States of America, nor can the state Court of Appeals of New Mexico deprive the Nevitt/Derringers the stock pond "real property" or the equal protection of the laws 72-5-32 and 72-9-3 that the Nevitt/Derringers are GUARANTEED the rights to legal stock ponds under the Private Property Act of Title 42 U.S.C. Section 1982. Thus, the Court of Appeals by oath of office and the Code of Judicial Conduct Canon 3 (B)(2) is **MANDATED** to uphold the 14th Amendment and not allow the Catron County Case CV-94-10 to over-ride, abridge the privileges and immunities that the Nevitt/Derringers' have in the United States, and defile the equal protection of state laws 72-5-32 and 72-9-3 to deprive the Nevitt/Derringers the equal protection to have legal stock

ponds, no matter how bad this Court wants to protect the illegal enslavement violations of the 13th Amendment of the Constitution by the Chapels contending unlawful control over the property of the Nevitt/Derringers. For the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry to continue to violate the 13th and 14th Amendment rights of the Nevitt/Derringers to allow the Chapels to take the statutory rights for stock ponds of the Defendants mandates public dismissal under the 14th Amendment Section 3, for deliberate violations of the US Constitution that the justices swore to enforce and protect. **SEE "US Constitution 14th Amendment Section 3**

Therefore, the Court of Appeals has to address the issue of violations of "equal protection" prohibiting the Nevitt/Derringers from their legal stock ponds despite the wrongful injunction of CV-94-10. In essence, the Injunction of CV-94-10 cannot be enforced by the mandates of the US Constitution 14th Amendment, Title 42 U.S.C. Section 1981(a), and the New Mexico Constitution Article 2 Section 18, so that the Nevitt/Derringers can have stock ponds under 72-5-32 and can build new stock ponds under 72-9-3 as a matter of Constitutional law. Thus, any court order over the waters of Harris Creek cannot have jurisdiction over the legal stock ponds of the Nevitt/Derringers, and this Court of Appeals has neither jurisdiction or judicial capacity to cause insurrection of Constitutional laws. Accordingly, no court has jurisdiction or judicial capacity under Constitutional law to order criminal trespass and criminal destruction of the private legal stock ponds on the Nevitt/Derringer property under the private

property act of Title 42 U.S.C. Section 1982. Clearly, since the "injunction" cannot be enforced because it violates the "equal protection" of the stock ponds under the 14th Amendment, any attempt to enter the private property of the Nevitt/Derringers would be a criminal act of trespass with intent to do destruction of private, legal structures; not unlike ordering the destruction of the Nevitt/Derringer private home or the killing of their livestock. Clearly, the Court of Appeals cannot uphold or enter into the violations of NMSA 1963, 30-28-1 or violations of Title 18 U.S.C. Section 373. The Court of Appeals "SHALL" uphold the law. Canon 3 (B)(2). Canon: "When the text uses "shall" or "shall not", it is intended to impose binding obligations the violation of which can result in disciplinary action."

The Court of Appeals disregards the clear intimidation from Judge Fitch that violates Title 18 U.S.C. Section 1512, and allows Judge Fitch to terrorize the Defendants, not recuse, and conduct business for the Chapels in any absence. This court refuses to set this matter on a General Calender so that justice can be served and the evidence reviewed for the truth under Rule 1-090. The Defendants sought to order and send the audio tapes of the January 16, 2003 hearing to the Court of Appeals, and the Court of Appeals refused. The audio tapes of January 16, 2003 establish that Judge Fitch attempted to illegally use his courtroom for deposing David Derringer to find any information about the federal law suit Susan Nevitt v. Judge Fitch CIV-02-1580 regarding her Civil Rights Complaint in Federal Court and undeniably show the bias, preferential treatment, prejudice and conspiracy of Judge Fitch with the Chapels and their attorney Joseph Manges.

The Court of Appeals purposefully ignores that stock ponds in New Mexico are an inherent right by statutory mandates, and ignores that since the Defendants have a Constitutional right to stock ponds under the "equal protection" of the laws, they cannot legally allow criminal trespass and criminal destruction of those legal structures in violation of Title 42 U.S.C. Section 1982 and in felony act of domestic terrorism against the Defendants under NMSA 1963, 30-28-1. It is clear that to order forced entrance on posted, private property to destroy legal and private structures is not in the jurisdiction of Judge Fitch, Chapels, or this Court of Appeals, and the Defendants are protected from these criminals by posting their private property, the federal private property act of Title 42 U.S.C. Section 1982 and criminal laws. Since, clearly the stock ponds of the Nevitt/Derringers are in statutory compliance of under 10 feet and impounding less than 10 acre feet of water if filled, they are protected by NMSA 1997, 72-5-32 and 72-9-3, and are thus outside of the jurisdiction of the Courts for injunction against, destruction of, or ability to gain entrance to the private property by reasons to enforce an illegal and unconstitutional injunction against them. Since both dams (under 10 feet) contain private, historical, roads of necessity, over the creek to access the other side of the private property, this Court of Appeals has no jurisdiction to order, or confirm any attempt at their destruction without the consent of the owners of the private property, which this court does not have. Manning v. Port R.R. Co (1986) 54 NJ Eq. 46, 33 A 802 that the **Court held that it "did not have the power to block an existing right-of-way by necessity, previously used by the owner."** In Douglas v. Jordan (1925) 232 Mich

283, 205 NW 52, 41 ALR 1437 "that a way of necessity became fixed in location across the lands and it could not be changed without the consent of the owners." Since the dams are legally compliant with 72-5-32 and 72-9-3, are guaranteed to the Defendants by the statutory wording, this Court of Appeals has to uphold statutory law, and the "equal protection" of those laws for the Defendants under the mandates of oath of office, Code of Judicial Conduct Canon 3 (B)(2) and compliance with the US Constitution 14th Amendment and the New Mexico Constitution Article 2 Section 18. State v. Southern Pacific Co., 281 P.29, 34 NM 306 "N.M. 1929 Statutes, though imperfect in form, should be upheld and sustained by the courts, if they can be construed as to give sensible effect and to render them of binding force." Since, under US CONSTITUTION, the courts do not have jurisdiction or judicial capacity over the legal stock ponds of the private Nevitt/Derringer property, to order entrance for destruction of these private, legal structures with added intent to deliberately destroy the only access to the home of the Nevitt/Derringers is a criminal felony under NMSA 1963, 30-28-1, Title 18 U.S.C. Section 373, and a direct violation of Title 42 U.S.C. Section 1982 to "invade" and terrorize and destroy the private property of the Nevitt/Derringers. Clearly, this Court of Appeals and Judge Fitch are creating an "invasion of privacy" without legal jurisdiction over structures compliant with state law, and unavailable under "equal protection" to grant an injunction against; such "injunction" itself depriving the "equal protection" of state laws 72-5-32 and 72-9-3. **US District Judge Robert Holmes Bell** "I feel very strongly that the role of government should be to protect your personal privacy, not

to be invading it." stated in Miller v. US. ; "To the Congress that passed the Civil Rights Act of 1866, it was clear that the right to do these things (hold, convey real and personal property) might be infringed not only by "State or local law" but also by "custom, or prejudice". US Supreme Court Jones v. Mayer Co., 392 US 409 (1968)

Clearly, each justice of the Court of Appeals, and Judge Fitch and other "**persons**" within the meaning of Title 42 U.S.C. Section 1983 would be directly liable for criminal and civil damages upon entering or ordering entrance on the Defendants' property, without the consent of the Nevitt/Derringers, upon the real **"posted"** property to destroy the legal stock ponds and roads of necessity over same. CF. Douglas v. City of Jeannette, US 157, 161; Hague v. C.I.O., 307 US 496, 507-514, 527-532 "To vindicate their rights under 42 U.S.C. 1982, the petitioners invoked the jurisdiction of the District Court to award "damages or...equitable or other relief under any Act of Congress providing for the protection of civil rights.." 28 U.S.C. 1342. In such cases, federal jurisdiction does not require that the amount in controversy exceed $10,000." Since each Court of Appeals justice, and Judge Fitch have no legal jurisdiction or judicial capacity to deprive the "equal protection" [14th Amendment, Title 42 U.S.C. Section 1981(a), NM Constitution Article 2 Section 18] rights of the Nevitt/Derringers to own, maintain, build anew, and use legal stock ponds under 10 feet and impounding less than 10 acre feet of water pursuant to the wording of state statutes 72-5-32 and 72-9-3, each justice involved in this criminal and civil deprivation of Title 1983 and Title 1986 action of violation of Civil Rights would be liable for criminal and civil damages with any order or destruction thereof on the private property of the

Nevitt/Derringers by forced "criminal" trespass access. Cameron v. Seitz, 38 F.3d 264, 1994 Fed. App. 356P "Judicial immunity may be overcome in only two sets of circumstances: First, a Judge is not immune from liability for non-judicial actions; ie. Actions not taken in judicial capacity. And, two, Judge is not immune from actions through judicial in nature, taken in the complete absence of all jurisdiction." The oath of office of justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry, wherein they swore to uphold the "equal protection" of the laws under Constitutional mandate would insure no judicial immunity in Civil Rights action over the illegal destruction of the Nevitt/Derringer legal stock ponds and private roads of necessity.

CONCLUSION

In the Memorandum Order of June 13, 2003, there are three Court of Appeals justices that violate their very oath of office meant to enforce, and "support the Constitution of the United States and the Constitution and laws of the State of New Mexico and that I will faithfully and impartially discharge the duties of the office of justice", and then subjugate, defile, terrorize, and cause insurrection to the basis of the United States Constitution by deprivation of both due process and equal protection of the laws. These justices, as Judge Fitch became "enemies of the United States" to attack the US Constitutional rights of the Defendants to "file complaints, motions, pleadings, discovery requests, or other legal papers", to be able to properly represent themselves Pro-Se in any court of law in the United States, and to have the equal protection of all laws, to include, but not limited to NMSA 1997, 72-5-32 and 72-9-3, and to be free and liberated citizens, allowed to

own and control their own private property from criminal invaders intent on trespass and destruction of legal, historical, private, and statutorily compliant stock ponds, dams, and private roads of necessity to their own home on their own private land, protected by Title 42 U.S.C. Section 1982 and the "equal protection" rights under Constitution. The justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry attempt to "work in concert" with the Chapels and Judge Fitch to deny and deprive all Constitutional rights of the Nevitt/Derringers outside of jurisdiction and judicial capacity, violating each Defendants' rights to unlawfully support the proven violation of state water laws with the Chapels' illegal dam of 14.3 feet without permit. Such attempts to enslave, oppress, subjugate, and intimidate the Defendants from their Constitutional and Civil Rights is a direct violation of Title 42 U.S.C. Section 1985, and Title 42 U.S.C. Section 1986 wherein each justice is "neglecting to prevent" damages to the Defendants by egregious acts of violation of oath, violation of the Code of Judicial Conduct Canon 3 (b)(2) and an attack on America by sedition, treason, and mis-use of power of state office to cause Constitutional rebellion.

In sum, the Court of Appeals justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry swore to God **[so help me God]**, I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico, and then ***blaspheme*** to God himself by denial and deprivation of the Defendants-Appellants rights of due process, equal protection, the rights to file complaints, motions, pleadings, discovery requests, and other legal papers, both in self defense of suits

and to initiate suits over unconstitutional and egregious acts committed against them and against all laws. The Court of Appeals has all case laws and Constitutional laws before them to stop the Chapels from further continuation in violation of 72-5-32 and 72-9-3 and defiling the mandates of the New Mexico Constitution Article 16, and to OBEY the water laws, and instead protect, single-out and aids and abets the Chapels violations of state water laws by attempting to hide unlawfully behind the doctrine of res-judicata, that itself has been proven by case laws not to apply to continually changing water rights. Robert Cross v. John Erickson, State Engineer of New Mexico Nos 7095, 7096, 7159 Supreme Court of New Mexico 380 P.2d 520, 72 N.M. 73 March 28, 1963 "**error on the part of the trial court in holding that the decision in the first two cases was res judicata on the third case. The amount of water which may be available is not always constant, and where at one time it might be determined that there was no unappropriated water, still later it might develop that the original determination was based on insufficient facts, or that, in the meantime, additional water had accumulated. Also it is possible that, by reason of forfeiture, abandonment of existing water rights, or other grounds, that a new appropriation could be granted which would not impair existing water rights at the time.**" As proven by all documents in Catron County Case CV-94-10, Mick Chapel knew that he was in violation of state water laws with an illegal 14.3 foot dam in 1994 and the OSE Memo of May 22, 1995 proving the Chapel dam at 14 feet, before CV-94-10 in 1996, but justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry choose to violate the equal protection of the Defendants and all New Mexicans to protect this fraud, when the Code of Judicial

Conduct and the New Mexico oath of office mandate this Court of Appeals to uphold statutory and the Constitutional laws of Article 16 to force the Chapels to comply with the laws of New Mexico at all times. State ex rel. Reynolds v. South Springs Co. 80 N.M. 144, 452 P.2d 478 (1969) "Owner of water right has duty to comply with law." ; State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951) Illegal use of public waters does not create any right to continue use since **statutory manner for securing right to use public waters is exclusive**.

Clearly, justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry have no honor to oath, Code of Judicial Conduct, or affinity for God himself to defy federal case laws and the New Mexico Constitution Article 16 and Article 2 Section 18, they swore to uphold and defend, and instead allow the Chapels to have, irrigate from, and use the 14.3 foot dam in violation of 72-5-32 , 72-9-3 and 72-5-39, to both violate the public of New Mexico, and to use this violation to enslave, take statutory rights, take Civil and Constitutional rights, and commit continual fraud against the Defendants, by use of this dam to deprive stock ponds legally available to the Defendants. Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43 U.S.C.A. 372 et seq. The case laws of New Mexico prevent the decisions of June 13, 2003, but each justice disregards the laws before him and adheres to the Chapel/Judge Fitch conspiracy to destroy the rights of the Defendants. State of New Mexico ex rel. S.E. Reynolds, State Engineer,

and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be."; Fort Sumner Irrigation District v. Carlsbad Irrigation District, 87 N.M. 149, 530 P.2d 943 (1974)"Court are not limited. No limitations have been placed by law upon power of district courts in these appeals to find facts, make conclusions of law and enter such judgements, orders and decrees as are proper to dispose of the issues." This Court of Appeals has certainly not quoted any case laws or Constitutional provisions that allow the Chapels to have a 14.3 foot dam without OSE permit and without the mandated safety engineered design before construction, nor has this Court of Appeals quoted any authority that grants the Chapels the use of an illegal dam/pond to over-ride the NM Constitution Article 16 or to over-ride the "equal protection" of the laws of New Mexico affordable to the Defendants and every other US citizen. In short, the laws demand Chapels to remove their illegal dam and demand that the Chapels cannot use New Mexico surface water or subjugate any other citizen by their illegal dam in oppression, slavery, or deprivation of legal use of stock ponds in New Mexico. This Court of Appeals is without either jurisdiction or judicial capacity to over rule the US and New Mexico Constitutions or to construe the statutory laws of New Mexico to allow either water violations by Chapels or deprivation of legal stock ponds and necessary private road of access to the Nevitt/Derringer home on their own private property. Reynolds v. King, 63 N.M. 425, 321 P.2d 200 (1958) Waters in controversy being public waters, **statutory manner of acquiring rights thereto is exclusive**.

The justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry intend to limit the truth under Rule 1-090 by refusal to read the entire court record of CV-94-10 that undeniably uncovers the Chapel fraud, illegal 14.3 foot dam, and conspiracy and Constitutional violations of Judge Fitch. In re Doe, 519 P.2d 133, 86 N.M. 37 "N.M. App. 1974 Failure to hear one party's evidence, when offered, establishes a presumption of prejudice." Concurrently, each justice intends to combine efforts with Chapels and Judge Fitch to take the inherent Constitutional 14th Amendment rights of the Defendants to file complaints, motions, pleadings, discovery requests, or other papers necessary for due process in any court in the United States at any time to sue or defend against suit, as provided for by legislature. With this deprivation, this Court has no conscience for the equal protection rights of the Defendants to have stock ponds as provided for by legislature, and intends to aid the criminal acts of Judge Fitch and the Chapels to commit criminal trespass and criminal destruction of legal stock ponds outside of the jurisdiction of this court, thus themselves committing criminal acts against the Defendants and their private property by violations of NMSA 1963, 30-28-1. This Court of Appeals intends to set case law in New Mexico in rebellion and insurrection against the US Constitution to enslave the Defendants in violation of the 13th Amendment to the courtroom of Judge Fitch, not ever allowing justice, or a fair and impartial trial on any matters, as mandated by case laws of mandated recusal and equality of justice, but to allow the Chapels to re-open CV-94-10 before their publically corrupt Judge Fitch, and to be able to sue the Defendants into oblivion by tying the hands of the Defendants and keeping them from

the adversarial process, denying discovery, and not affording the Defendants to litigate Pro-Se as provided for by the 14th Amendment. This Court intends to rout out the "poor" Defendants to be forced to hire an attorney or be denied any process in a court of law. Clearly, this Court knows that they are not limiting the Defendants from the number of pages in a particular pleading, but are instituting illegal and unconstitutional case law for a privation of 14th Amendment rights in the court of Judge Fitch or any court in the United States. This court is setting the stage for the Chapels' re-opening of CV-94-10 at any time, since the Chapels have now dried up their dam/pond so that they can lie again to CV-94-10 that the Defendants violated the unconstitutional "injunction" and gain more damages illegally from Judge Fitch to enslave and steal the real estate of the Defendants. The decisions of June 13, 2003 from this court are untenable, contrary to logic, direct insurrection of the US Constitutional laws, and meant to aid the abet the Chapels and Judge Fitch to ruin the lives of the Defendants. In re Rochkind, 128 B.R. 520 Mich. 1991 "To use power of public office as judge to ruin another for personal gain plainly violates several provisions of the Code of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5." ; Richens v. Mayfield, 85 N.M. 578, 514 P.2d 854 (1973) "Abuse of discretion is present which is defined as when the judge has acted arbitrarily or unreasonably under the particular circumstances." Instead of "honestly, faithfully, and competently performing their functions as public servants" (Nixon v. Warner Communications Inc. 435 U.S. 589 (1978)), the malicious, direct, and premeditated violations of Constitutional law by the justices A. Joseph Alarid, Lynn

Pickard, and Cynthia Fry mandates removal from the bench under the Order of the U.S. Constitution 14th Amendment Section 3. Such sedition and treason against the US Constitution by justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry is beyond reproach, but vile and reprehensible to swear to God not to defile an American under oath to protect the US and NM Constitution and state laws, and then enter into a conspiracy with Chapels and Judge Fitch to take the essence of being an American by stealing the rights under Constitutional law from the defendants. *Canon: "Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice ad the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law."*

THEREFORE, the Memorandum Opinion of June 13, 2003 is in direct attack on the US and NM Constitutions, and **such matters should be reconsidered** by fair, equal, and independent justices in the New Mexico Court of Appeals that will honor their oath of office to comply with the US and New Mexico Constitutions and laws of New Mexico, or mandate the removal of this case to a federal court, since the 14th Amendment rights of the Defendants have been extremely violated by justices A. Joseph Alarid, Lynn Pickard, and

Cynthia Fry in collusion with the Constitutional rebellion of Judge Fitch. **SEE** Monroe v. Pape, 365 US 167 (1961) **SEE** also 42 U.S.C. Section 1985 and 42 U.S.C. Section 1986.

Respectfully submitted
by: /s/David Derringer, Susan Nevitt, Norma Nevitt Pro-Se
Box 157
Quemado, New Mexico 87829

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct original of the forgoing to be sent via first class prepaid mail to the following counsel of record in this matter on the 20th day of June, 2003.

Joseph Manges
P.O. Box 669
Santa Fe, New Mexico 87504-0669

I hereby further certify that I caused a true and correct original of the forgoing to be sent certified mail on the 20th day of June, 2003 for filing to:

Patricia Wallace, Clerk
New Mexico Court of Appeals
P.O. Box 2008
Santa Fe, New Mexico 87504

By/s/ David Derringer
David Derringer Pro-Se
P.O. Box 157
Quemado, New Mexico 87829

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO
Ct. App. No. 23,965

Catron County CV-94-10
MICK CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Appellees,

v.

SUSAN M. NEVITT, NORMA J. NEVITT,
and DAVID DERRINGER,
Defendants-Appellants,

APPELLANTS' MOTION FOR REHEARING: BASED ON MALICIOUS VIOLATIONS OF THE U.S. AND NM STATE CONSTITUTIONAL RIGHTS AND CIVIL RIGHTS OF THE DEFENDANTS BY JUSTICES ALARID, FRY, AND PICKARD BY WILLFUL U.S. 13th and 14th AMENDMENT VIOLATIONS, VIOLATIONS OF TITLE 42 U.S.C. SECTION 1981(a), TITLE 42 U.S.C. SECTION 1982, TITLE 42 U.S.C. SECTION 1983, CONSPIRACY AGAINST RIGHTS IN VIOLATION OF TITLE 42 U.S.C. SECTION 1985, TITLE 18 U.S.C. SECTION 241, AND NEGLECT TO PREVENT CONSTITUTIONAL, CIVIL RIGHTS, AND PRIVATE PROPERTY ACT RIGHTS DEPRIVATIONS OF THE DEFENDANTS UNDER VIOLATIONS OF TITLE 42 U.S.C. SECTION 1986 DUE TO DIRECT ATTACK AND INSURRECTION OF THE US CONSTITUTION BY VIOLATIONS OF OATH OF OFFICE AND CODE OF JUDICIAL CONDUCT CANON 3 (B)(2)(5)(7) TO ORDER THE PERSECUTION OF THE DEFENDANTS AND INVOLUNTARY SERVITUDE OF THE DEFENDANTS IN THE MEMORANDUM OPINION OF JUNE 27, 2003 BASED UPON CHAPELS' CRIMINAL FRAUD AND VIOLATIONS OF STATE WATER LAWS WITH A DAM IN VIOLATION OF STATUTES 72-5-32 AND 72-9-3

COMES NOW the Defendants-Appellants pursuant to NMRA 2002, Rule 1-059(A)(B)(E) and Rule 1-060(B)(1)(3)(4), timely within 10 days by certified mail, wherein the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry are violating the Code of Judicial Conduct Canon 3 (B)(2) and the oath of office[20] in the Memorandum Opinion of June 27, 2003 in direct conspiracy with the Chapels and Judge Fitch, against the privileges and immunities as inherent rights of the Defendants in the United States of America, yet again, as in No. 23,815 to persecute and create hate crimes against the Pro-Se Defendants, just as these justices did in the Memorandum Opinion No. 23,815 of June 13, 2003 to protect, aid and abet the insurrection and Constitutional degradation of the US Constitution 13th Amendment and the 14th Amendment in sedition and treason as did state Judge Thomas G. Fitch. These egregious acts are clearly in collusion and conspiracy against the Defendants-Appellants inherent Constitutional and Civil Rights, to deprive their due process, self representation Pro-Se in the US Courts, and their rights to equal protection of the laws under Title 42 U.S.C. Section 1981(a), and to "enslave" the Defendants with Chapels' violation of state laws with an illegal 14.3 foot dam, of which each justice "swore to God" [so help me God] that they would uphold all Constitutions and New Mexico state laws, to include the New Mexico Constitution Article 16 that absolutely prohibits the Chapels' dam or any enslavement of

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"I, Judge _____, do solemnly swear that **I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico**, and that I will faithfully and impartially discharge the duties of the office of Judge on which I am about to enter, to the best of my ability **SO HELP ME GOD**."

the Nevitt/Derringers' private property by the illegal use thereof. In short, justices Joseph Alarid, Cynthia Fry, and Lynn Pickard have injured, oppressed, threatened, and intimidated the Defendants by malicious violations of equal rights under laws to deny, deprive, subjugate, and abridge the free exercise and enjoyment of livestock watering stock ponds in New Mexico guaranteed to all citizens of New Mexico by NMSA 1997, 72-5-32[21] and 72-9-3, and have unlawfully singled out the Chapels to allow them to create involuntary servitude on the private property of the Nevitt/Derringers in a conspiracy against rights within the meaning of Title 18 U.S.C. Section 241 to deprive rights and privileges, and further have conspired to punish, persecute and conduct hate crimes against the

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Stock ponds in New Mexico are guaranteed statutory rights not subjugated to any claims of downstream surface water irrigation rights pursuant to NMSA 1997, 72-5-32 and 72-9-3. The Court of Appeals has no case laws, statutes, or Constitutional provisions to prevent the Nevitt/Derringers from "equal protection" use and ownership of their legal, historical and private two stock ponds, and violate their oath of office to condone and Order the destruction of the private Nevitt/Derringer stock ponds, subject the Nevitt/Derringers to damages and financial punishment for the ownership of these legal structures, and grant the Chapels criminal trespass and the ability to domestically terrorize the Nevitt/Derringers by coming illegally onto the Nevitt/Derringer property to destroy both stock ponds and the two private roads of necessity within the privately protected lands to deprive the Nevitt/Derringer viable "life" within their own property by destruction of the roads needed to provide access to food, water, shelter, heat, electricity, and other necessities of life, and further create cruel and unusual punishment for legal property ownership by denial of due process, equal protection, self representation and then punish and persecute the Defendants for exercising their 14th Amendment rights to protect their property by assessment of "attorney fees" against them, when the Defendants have legally litigated against the criminal onslaught of the Chapels' fraud.

Defendants by agreeing with the Chapel/Judge Fitch conspiracy to attack the Defendants and their lawful property to destroy legal structures, deprive life, and financially ruin the Defendants by assessing damages against their lawful rights to own personal and real property in complete insurrection and sedition of the United States Constitution. These justices now conduct cruel and unusual punishment and "judicial terrorism" against the Defendants by Ordering "attorney fees" for the Pro-Se party's attempts to exercise their due process rights in a court of law to defend against the criminal fraud of the Chapels violations of state laws. This pleading can also be documented "testimony" of the treason against the United States of America by justices Alarid, Fry, and Pickard violating their oath of office meant to defend the US Constitution against enemies; and instead to protect, aid and abet the Enemies of the United States of America, Judge Fitch, Chapels and attorney Joseph Manges, in "treason against the United States" within the meaning of US Constitution Article III, Section 3 wherein these justices have "adhered to their (United States) Enemies, giving them aid and comfort." Testimony hereby given by David Derringer, Susan Nevitt, and Norma Nevitt (more than two witnesses) to these overt acts pursuant to Article III, Section 3 US Constitution.

As a statement to Notify the Court record: The Chapels and attorney Joseph Manges have failed, refused, and clearly obviated any necessity to legally respond to the proposed disposition of either case No. 23,815 or No. 23,965 with the NM Court of Appeals, as clearly the Pro-Se Defendants are litigating against the combined efforts of Judge Fitch, Chapels, and the Court of Appeals as a solidarity unit defying the laws and Constitution against the Defendants in unison. Clearly, the Plaintiffs felt no need to enter the

litigation when the Court of Appeals violates all laws to protect them in their own behalf by violations of oath of office, by allowance of a statutory violating dam of 14.3 feet without the mandated permit or safety engineered design before construction, fraud, money and power to control surface water in New Mexico against all laws, both state and federal; taking all United States rights and privileges from the Defendants and criminally attacking their lands. Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43 U.S.C.A. 372 et seq.; State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be."; Reynolds v. King, 63 N.M. 425, 321 P.2d 200 (1958) Waters in controversy being public waters, **statutory manner of acquiring rights thereto is exclusive.**

I

NO. 23,815 IS ILLEGALLY BEING USED AS CASE LAW TO ATTACK THE CONSTITUTIONAL AND CIVIL RIGHTS OF THE DEFENDANTS AGAIN IN NO. 23,965

The Court of Appeals issued the Memorandum Opinion of No. 23,815 attacking the Constitutional and Civil Rights of the Defendants by mis-use of power and abuse of discretion of the justices Alarid, Fry, and Pickard. These justices violated their oath of office and the Code of Judicial Conduct to "single-out" the Chapels as available to violate state water laws and the NM

Constitution with an illegal 14.3 foot dam without permit, and for the Chapels to use that unlawful dam to subjugate and oppress the Constitutional and Civil Rights of the Nevitt/Derringers, and deprive the Nevitt/Derringers their own statutory rights for stock ponds, and then sanctioned, created illegal damages and, in fact persecute and punish the Defendants by fines of $20,000 plus $100.00 per day fines for the Nevitt/Derringer ownership of **legal structures on their own private property** that are guaranteed to the Defendants under 72-5-32, 72-9-3, the 14th Amendment, Title 42 U.S.C. Section 1981(a), Title 42 U.S.C. Section 1982 and in New Mexico under the state Constitution Article 2 Section 18. Richens v. Mayfield, 85 N.M. 578, 514 P.2d 854 (1973) "Abuse of discretion is present which is defined as when the judge has acted arbitrarily or unreasonably under the particular circumstances." ; Conejos County Lumber Co. v. Citizens Sav. & Loan Ass'n, 80 N.M. 612, 459 P.2d 138 (1969) "Discretion, in this sense was abused when the trial judge acted arbitrarily or unreasonably." It is clearly more than "abuse of discretion" when a state judge, who swore to God to uphold the US Constitution, acts in insurrection and treason against the United States of America to defile and attempt to "overthrow" the justice system based upon that Constitution. Hence, the Opinions of No. 23,815 and No. 23,965 are "treason" against the very foundation of the United States that mandates the removal forever from public service the justices of Alarid, Fry, and Pickard under the MANDATES of the United States

Constitution 14th Amendment Section 3.[22] Newsome v. Farer, 103 N.M. 415, 420, 708 P.2d 327, 332 (1985) "Abuse of discretion will ..be found when the district court's decision is clearly untenable or contrary to logic and reason."

However, these Justices now also use this No. 23,815 illegally as case law wherein the Defendants have already timely stopped this No. 23,815 by a Motion for Reconsideration seven (7) days before this Court uses the case No. 23,815 illegally to support No. 23,965. This Motion for Reconsideration of No. 23,815 was sent certified mail #7002-2030-0001-9754-9582 on June 20, 2003. Hence, No. 23,815 is not available as case law to push unlawfully through No. 23,965, but is being used by these justices to simply attend the public corruption of the violation of Constitutions occurring here without legal substance. Perez v. Perez 75 N.M.656, 409 P.2d 804 (1966) "A motion under this rule (Rule 1-59 Motion for Reconsideration-new trial) made within 10 days, does affect finality of judgement and the running of the time for appeal." These justices know that the "case law" of No. 23,815 is legally unavailable to them by the mandates of Canon 3 (B)(2), and have intelligibly entered into a civil and criminal conspiracy with the racketeering going on with the Chapels and Judge Fitch to protect the unlawful Chapel dam of 14.3 feet without permit and to allow the Chapels to use this illegal

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"US Constitution 14th Amendment Section 3-No person shall be an...elector..or hold any office, under the United States, or under any State, who, having previously taken an oath,... as a judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

"vehicle" in the courts to drive out the Nevitt/Derringers from their legal property by criminal fraud, trespass, criminal destruction of legal stock ponds and private roads of necessity to prevent the Nevitt/Derringers from both ingress and egress to their home; that itself a criminal and illegal act to prevent **"life"** within the meaning of the US Constitution 14th Amendment by depriving the Nevitt/Derringers their private roads of access, thus denying water, food, heat, electricity, emergency access, safety, shelter, and other necessities for **LIFE** itself; all based upon the criminal fraud of Chapels' illegal dam that is used in violation of all laws to enslave the oppress the life, liberty and rights of the Defendants in violation of the 13th Amendment. In sum, the Case CV-94-10 has been always jurisdictionally defective by the deliberate omission of the necessary and indispensable party of David Derringer, precluded his 14th Amendment rights to defend against the Judgement and Injunction of May 17, 1996 that illegally seized and enslaved his property without due process, but could not ever continue to Nos. 23,815 and 23,965 due to the underlying Constitutional parameters wherein at no time could an "injunction" be placed against the Nevitt/Derringers or their property to abridge, deny and deprive the Nevitt/Derringers' statutory rights to their own legal, historical and private stock ponds; hence CV-94-10 must be declared a "mistrial" by Constitutional definition. Martinez v. Knowlton, 88 N.M. 42, 536 P.2d 1098 (Ct. App.) Cert denied 88 N.M. 28, 536 P.2d 1084 (1975) "The declaration of a mistrial is a ruling which in effect states, as a matter of law, that the trial cannot stand because of the disregard of some fundamental prerequisite, and the admission of evidence in violation of the

collateral source rule constitutes such reversible error." In this matter the US Constitution of equal protection forbids the CV-94-10 rulings and the rulings of No. 23,815 and No. 23,965.

BACKGROUND

The Nevitt/Derringers purchased the real property known as the NW1/4 of the SE1/4 of Section 28 Township 2 South, Range 17W in Catron County New Mexico pursuant to their inherent rights for real property ownership pursuant to the rights and privileges of citizens of the United States of America under the Private Property Act of Title 42 U.S.C. Section 1982 wherein ***"All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."*** ; Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 (1968) No. 645 "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. Congress provided that the right to real and personal property was to be enjoyed equally throughout the United States, and that right was to be secured against interference from any source whatever, whether governmental or private." The Nevitt/Derringer purchase of this real property, in 1993 prior to CV-94-10, included two (2) separate private and statutorily compliant stock ponds[23], later

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The Nevitt/Derringer two private stock ponds are statutorily guaranteed in New Mexico by NMSA 1997, 72-5-32 and 72-9-3 as long as each has a dam under 10 feet and would impound less than 10 acre feet of water when filled, and there is no statutory meaning, nor any case laws that prohibit any New Mexico citizen from owning, creating (under 72-9-3) or using a stock pond due to any downstream claim of surface water irrigation rights.

to be named by the Nevitt/Derringers as "Cattail" and "Moonbeam", each of which has a dam under 5 feet, each would impound less than 3 acre feet of water when filled, and have been historical on the Nevitt/Derringer property for at least 60 years, being identified on the USGS Map Gallo Mountains East Quadrangle, and have been used for cattle, horses and other livestock watering in compliance with state statutes the entire time since construction, as a guaranteed "**BENEFICIAL USE OF SURFACE WATER**" in New Mexico protected by both statutory laws NMSA 1997, 72-5-32, 72-9-3 and case laws. State Bank v. McNew, 33 N.M. 414, 269 P.56 (1928) "Use of water for domestic purposes, including stock watering is "beneficial use" of water". ; Millheiser v. Long, 10 N.M. 99, 61 P.111 (1900). "Private ownership of water in public streams was prohibited, and a right to use of waters for beneficial purposes was given to those who appropriated and applied them to such uses." Hence, the real property of the Nevitt/Derringers has two private, historical, legal, and statutory compliant stock ponds and roads of access over the dams thereof that are outside of the jurisdiction of Judge Fitch, Chapels, Judge Alarid, Judge Fry, and Judge Pickard, wherein these named persons have no proprietary interest, no monetary

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Hence, ownership of stock ponds on private property in New Mexico, that are in legal compliance with laws becomes a private property asset, and personal property not in the jurisdiction of any persons, courts, or agencies without proprietary interest, monetary interest, or contractual interest in the real property, and such "rights and privileges" are secured against interference by Title 42 U.S.C. Section 1982, Title 42 U.S.C. Section 1983, and the "equal protection" of the laws secured by the US Constitution 14th Amendment, Title 42 U.S.C. Section 1981(a) and the New Mexico Constitution Article 2 Section 18.

interest, and no contractual interest in the Nevitt/Derringer property. N.M. Constitution Article II Bill of Rights Section 4 "All persons are born equally free, and have certain natural, inherent, and inalienable rights, among which are the rights of enjoying life and liberty, of **acquiring, possessing and protecting property**, and of seeking and obtaining safety and happiness." Accordingly, the stock ponds and roads on the Nevitt/Derringer property are as much "personal property" as the house and toothbrush of the Nevitt/Derringers, and cannot be limited or deprived by injunction, nor the Nevitt/Derringers punished or damaged by the ownership thereof, and the Nevitt/Derringers can defend this property ownership in any court of law by Complaint, motions, pleadings, discovery requests, or any other legal papers necessary by the due process afforded them under the 14th Amendment without illegal dissuasion by unlawful attorney fees being sanctioned against them. City of Memphis v. Greene, Tenn. 1981 101 S. Court 1584, 451 US 100, 67 L.Ed.2d 769 rehearing denied 101 S. Ct. 3100, 452 US 955, 69 L.Ed.2d 965 "Private Individuals-This section [Title 42 U.S.C. Section 1982] guaranteeing all citizens of the US the same right as is enjoyed by white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property is directly applicable to private parties." Accordingly, this Court of Appeals cannot single out the Nevitt/Derringers by the fraud use of CV-94-10 to deny stock ponds, create or condone the illegal damages against the legal stock ponds, or punish the Nevitt/Derringers for legal ownership of real property or private legal structures that are protected from these unethical justices by Title 42 U.S.C. Section 1982 by financial damages of $20,000 or $100 per day fines for

ownership of this personal and real property as selective and unusual punishment, wherein the Defendants have done nothing in violation of state laws, but are in full compliance with NMSA 1997, 72-5-32 and 72-9-3. Constitutional laws, statutes-both state and federal, and all case laws prevent this court from awarding damages in persecution of the Defendants and prevents the award of attorney fees against the Defendants for punishment of the Defendants exercising their rights of due process under the 14th Amendment as provided for by Constitutional law to defend against the fraud of the Chapels and the public corruption of this court and the Courtroom of Judge Fitch. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding." Clearly, the United States 13th Amendment prevents this court from the enslavement of attorney fees to stop the legal litigation from the Pro-Se Americans. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The justices named above intend to attack the Constitutions to afford the Chapels and Judge Fitch the safety of the public corruption of New Mexico at the expense of the rights of the American public under the United States Constitution, wherein this Courts' own violations of their oath to uphold the Constitutional laws of America can aid and abet Judge Fitch and the Chapels to destroy the Defendants financially by additional attorney fees, and allow their home and **legal** stock

ponds to be destroyed, ruined, and stolen by the Chapels in criminal fraud.

These justices, as Judge Fitch, clearly hope that these abhorrent acts, domestic terrorism, and oppression will preclude federal suit against any that defy the Constitutional rights of the Defendants. Undeniably, however federal Civil Rights litigation will occur to any "persons" within the meaning of Title 42 U.S.C. Section 1983, or judges that disobey the US Constitutional laws and defy Title 42 U.S.C. Section 1986 to "neglect to prevent" Constitutional deprivations, and destroy the private property stock ponds and private roads of the Defendants, which are protected by statutory laws NMSA 1997, 72-5-32, 72-9-3, "equal protection rights" of the 14th Amendment, Title 42 U.S.C. Section 1981(a) and the private property rights of legal structures that a United States citizen is protected from harm or interference by Title 42 U.S.C. Section 1982. The Defendants cannot be subjected to cruel and unusual punishment of attorney fees as punishment for exercising due process rights to fight against the corruption of the Chapels and the courts of New Mexico. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 (1968) No. 645 "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. Congress provided that the right to real and personal property was to be enjoyed equally throughout the United States, and that right was to be secured against interference from any source whatever, whether governmental or private."

The Defendants have a right to have the attorney fee appeal of CV-94-10 Judgement of February 28, 2003 removed from this

biased and unethical state Court of Appeals to a federal court, since the Court of Appeals justices are intent on further and continual violations of the 14th Amendment rights of the Defendants in No. 23,965, just as these justices have done to the Defendants in No. 23,815. Section 3 of the Civil Rights Act of 1866 Stat. 27, 28 U.S.C. Section 1443. **SEE** Virginia v. Rives, 100 US 313, 318 (1880) "In enforcing by appropriate legislation the Fourteenth Amendment guarantees against state denials, Congress has the discretion to adopt remedial measures, such as authorizing persons being denied their civil rights in state courts to remove their cases to federal courts, and to provide criminal and civil liability for state officials and agents, or person associated with them." **SEE** Monroe v. Pape, 365 US 167 (1961) **SEE** also 42 U.S.C. Section 1985 and 42 U.S.C. Section 1986. This Court of Appeals has "specific intent" to help Judge Fitch violate the 13th Amendment and 14th Amendments against the Defendants' "rights and privileges secured" by the equal protection of the Constitutions of both the United States and New Mexico Article 2 Section 18 and Section 16 under water rights, and to illegally punish the Defendants by attorney fees for "standing up" for their Constitutional rights by legal litigation. "The statutory measures designed to eliminate discrimination "under color of law" present no problems of constitutional foundation." United States v. Price 383 US 787 (1966). "laws punishing all conspiracies– with or without state action– that interfere with Fourteenth Amendment rights" "whether or not state officers or others acting under the color of state law are implicated in the conspiracy". United States v. Guest, 383 US 787 (1966) (due process clause) and United States v. Guest, 383 US 745 (1966) (equal protection clause). Thus, the Court of Appeals in the

Memorandum Order of June 27th, 2003 is an "intent to deprive equal protection, or equal privileges and immunities" to the Defendants by both deprivation of due process in Judge Fitch's and other courts, punishment for that legal due process by unlawful attorney fees to persecute the Defendants, and to allow the Chapels to violate state laws, and to use those same violations against the Defendants to take the Defendants privileges to enjoy their own statutory rights to stock ponds by the subjugation and enslavement to the Chapels illegal, unconstitutional and jurisdictionally defective Judgement and Injunction of CV-94-10 of May 17, 1996 of which David Derringer **(NON-PARTY)** and his property were denied due process to fight against the fraud in litigation in open court. "The conspiracy *(of the Court of Appeals working in concert with the Chapels and Judge Fitch to order denial of due process by court order in sedition to the 14th Amendment, and violation of "equal protection" of state laws 72-5-32 and 72-9-3, and violations of 14th Amendment Constitutional laws to deprive the rights of stock ponds by statutes 72-5-32 and 72-9-3, and to force the Defendants continually before the criminal and biased Judge Fitch in deprivation of the doctrine of fairness of due process, and to persecute and punish them by attorney fees when exercising their Constitutional 14th Amendment rights)* in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all". **All United States citizens are availed to use their rights of due process under the 14th Amendment without penalties or unusual, cruel, or "select" punishment by attorney fees to defend against the proven Chapel fraud. SEE** Griffin v. Breckenridge, 403 US 102 (1971) Clearly, New

Mexico stock ponds are enjoyed by all New Mexicans except the Nevitt/Derringers due to the illegal control and enslavement of the Chapels, and there are no case laws and no wording in the stock pond statutes 72-5-32 and 72-9-3, that give any authority to the Court of Appeals to deprive, or to allow destruction of the stock ponds to the Nevitt/Derringers by any downstream claim of Chapels to irrigation, or to conduct hate crimes against the Defendants with attorney fees when the Defendants are legal in their pleadings and filings under Rule 1-011. Accordingly, the "enslavement" by this Court of Appeals to the criminal and unconstitutional acts of the Chapels using color of state law violations to control the private property of the Defendants, and to steal the Defendants statutory rights to stock ponds by Chapels' own violations of state water laws with an illegal 14.3 foot dam without permit, and this despicable act to be enforced by this Court of Appeals to punish the Defendants for not submitting to the public corruption of the New Mexico Courts is slavery and unusual and selective punishment, persecution and retribution not allowable by the 13th Amendment of the United States Constitution. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." ; Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding." In short, the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry know they cannot violate the

US Constitutional rights of the Defendants and make the Defendants subject to the control of the Chapels, by use of Chapels violations of water law with a 14.3 foot dam in statutory violation, and enter into the Chapel/Judge Fitch conspiracy to destroy the Pro-Se parties rights under US Constitution when the justices "**swore to God**" under state oath that they would never do this to an American, and thus violate the US and NM Constitutional rights of the Defendants with **malice**, wherein there is no immunity for these acts of sedition and treason against the US Constitution they swore to protect, and they cannot continually punish the Defendants by attorney fees to make the Defendants "back down" and submit to this dictatorship corruption against all laws and allow these unethical justices to ruin the lives of the Defendants. In re Rochkind, 128 B.R. 520 Mich. 1991 "To use power of public office as judge to ruin another for personal gain plainly violates several provisions of the Code of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5." ; **SEE** footnote #1 NM State Oath of Office of justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry that were filed with the New Mexico Secretary of State. U.S. v. McMahon, 562 F.2d 1192 "Gist of offense of conspiracy is agreement among the conspirators to commit the offense, attended by an act of one or more of the conspirators to effect the object of the conspiracy."

BACKGROUND OF THE UNLAWFUL PUNISHMENT OF ATTORNEY FEES MEANT TO STOP THE DEFENDANTS LITIGATION FOR TRUTH AND JUSTICE

Thomas Fitch **swore to God** [**so help me God**] in January,

2003, that he would honor the US Constitution, and the Constitution and laws of New Mexico. Fitch not only defiled the NM Constitution Article 16 by knowingly allowing the Chapels to have a dam in statutory violation continuously in violation of NMSA 1997, 72-5-32 and 72-9-3, and knowingly helps the Chapels attack the Defendants with their own violation of laws, but as the Defendants continue to litigate Pro-Se, to uncover the Judge Fitch/Chapels criminal and civil conspiracy of fraud and perjury, based upon actions of public corruption of Judge Fitch in racketeering with the Chapels, Fitch realizes that he cannot protect the law violations of Chapels[24] without stopping the Defendants' litigation against them. Accordingly, Thomas Fitch has himself resorted to domestic terrorism to attack the Defendants by phone

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Mick Chapel admitted in CV-94-10 Court testimony of June 14, 1994 and again in deposition of October 12, 1994 that he destroyed the Frank Armijo dam/pond on his property and illegally had built a new dam in 1984 in a different location without the mandated permit and safety engineered design before construction under NMSA 1978, 72-5-32 and 72-9-3. Mick Chapel also admitted that the dam was well in excess of the statutory limit of 10 feet and impounding about twice the statutory limit of water. Hence, Mick Chapel had admitted prior to the trial of CV-94-10 that his dam was not the Frank Armijo dam and was in complete violation of state laws, prohibited by NMSA 1978, 72-5-39 and the NM Constitution Article 16. The State Engineer Memorandum of May 22, 1995 confirmed that the Chapel dam was 14 feet in complete violation of state laws, and that it was not the extinct Frank Armijo dam of Declaration #02311. The Chapels, with the assistance of Judge Fitch lied to the jury in April, 1996 and presented the fraudulent ideas and question #1 to the jury to convince them that the Chapel dam was the same dam as the Frank Armijo dam and that it was less than 10 feet in dam height and impounded less than 10 acre feet of water. Thomas Fitch was both instrumental and conspiratory in this criminal fraud with the Chapels.

harassment, sexual harassment, intimidation within the meaning of Title 18 U.S.C. Section 1512 and 373, and violation of rights, in criminal attempts to get the Defendants to "back down" and submit to this public corruption. Thomas Fitch has conducted these egregious acts to stop the litigation against the Chapels in order to protect them, and after the Defendants filed federal suits against Fitch[25], Fitch used his personal attacks, and attacks against the Defendants' property as also a means to stop the litigation against himself in federal court; Fitch hoping that his "power" as a Judge would intimidate the Pro-Se parties to back down, and allow Fitch and the Chapels to ruin their lives and force them from Catron County.[26] In re Rochkind, 128 B.R. 520 Mich. 1991 "To use power of public office as judge to ruin another for personal gain plainly violates several provisions of the Code

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In 2002 Susan Nevitt filed federal suit Susan Nevitt v. Judge Fitch CIV-02-1580, and after the complete deprivation of due process and equal protection and death threats from Thomas Fitch in January, 2003 filed Susan Nevitt v. Thomas Fitch CIV-03-0155. Due to other violations, and Constitutional deprivations, David Derringer, has also filed federal suits against Fitch on his own behalf. David Derringer v. Judge Fitch et al CIV-02-0974, and David Derringer v. Thomas Fitch CIV-03-0149.

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Chapels have been documented in drug trafficking, poaching, illegal sales of black market animal parts, and illegal importation of AK-47 rifles to the remote canon of Harris Creek, wherein the only properties are owned by the Defendants and the Chapels. The Chapels have terrorized the Defendants for 9 years including aggravated assault, shooting at the occupied dwelling of the Plaintiff, killing their pets and livestock, criminal trespass, criminal stalking, and death threats and other domestic terrorism. NM State Police Report NMUSP1100. Thomas Fitch is a co-conspirator with the Chapels in attempts to drive out the Defendants so that all criminal acts can go on unimpeded.

of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5."

When Thomas Fitch called Susan Nevitt from a pay phone on January 4, 2003 [27] and threatened David Derringer's life with murder in the Catron County jail, upon the planned illegal incarceration by Fitch under the guise of "contempt of court", Judge Fitch had hoped that all Defendants would not appear at the mock trial for Chapels on January 16, 2003, and indeed he succeeded in intimidating Susan Nevitt and her mother, Norma Nevitt, (violations of Title 18 U.S.C. Section 1512) to be too afraid to appear before the man, "Fitch", that had stalked, conducted sexual harassment, and threatened their lives. In re Hey, 193 W. Va. 572, 457 S.E.2d 509 (1995) "Sexual harassment is a proscribed judicial activity." However, as David Derringer still appeared to represent himself, Judge Fitch unlawfully used his courtroom for attempts to "depose" David Derringer over the federal Complaint of sexual harassment and phone harassment Susan Nevitt had in federal court CIV-02-1580. The audio tapes of the CV-94-10 hearing on January 16, 2003 clearly establish that "Judge" Fitch mis-used his power to intimidate the "Plaintiff's witness" (Susan Nevitt is Plaintiff to Judge Fitch in CIV-02-1580) to Fitch's sexual harassment, by use of his open court in violation of all Rules to illegally attempt to obtain

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Judge Fitch admits in open court of CV-94-10 that the allegation of Susan Nevitt in federal Case CIV-02-1580 is that he personally made the death threat phone call on January 4, 2003. Audio record of open court CV-94-10 January 16, 2003: *Judge Fitch: "But there was a suggestion that the court, the judge, myself, had sexually harassed Ms. Nevitt, and there was a more recent allegation that I made a telephone call to her."*

information about federal Case CIV-02-1580 of which Fitch is a Defendant. The audio tapes of January 16, 2003 establish that Judge Fitch attempted to illegally use his courtroom for deposing David Derringer to find any information about the federal law suit Susan Nevitt v. Judge Fitch CIV-02-1580 regarding her: CIVIL RIGHTS COMPLAINT PURSUANT TO 42 USC 1983 FOR VIOLATIONS OF 14TH AMENDMENT RIGHTS, **STALKING AND SEXUAL HARASSMENT**, DEPRIVATION OF DUE PROCESS, VIOLATIONS OF DENIAL OF STATUTORY RIGHTS IN NEW MEXICO DENYING EQUAL PROTECTION, OBSTRUCTION OF JUSTICE, VIOLATIONS OF STATE STATUTES AND NM CONSTITUTION, VIOLATION OF CONSPIRACY AGAINST RIGHTS UNDER TITLE 18 SECTION 241, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, VIOLATIONS OF THE CODE OF JUDICIAL CONDUCT, AND VIOLATIONS OF CIVIL RIGHTS OF PROPERTY OWNERSHIP. On December 19, 2002 Judge Fitch had attorney Sean Olivas represent him in CIV-02-1580, and thus, pursuant to F. LR 83.5 Judge Fitch could not represent himself in any matter regarding CIV-02-1580 including "questioning" a witness to his crime. The following quotes are directly from the audio tapes of the CV-94-10 hearing of January 16, 2003. *Judge Fitch: "May I have appearances please" David Derringer: "I am David Derringer, representing myself Pro-Se". Judge Fitch: "Your wife and your mother-in-law are coming-participating today?" David Derringer: "Your honor, I am Pro-Se. I can't represent them since I am not an attorney, but they are physically and mentally incapacitated and could not attend. My mother-in-law Norma Nevitt, however, no longer owns the property in question, and I do have durable power of attorney to represent*

the property completely for my wife even though she is incapacitated." Judge Fitch: "There are some preliminary matters.." "There were some new allegations made..I kinda believe that was Ms. Norma Nevitt..I'm not sure. But there was a suggestion that the court, the judge, myself, had sexually harassed Ms. Nevitt, and there was a more recent allegation that I made a telephone call to her. Do you have? Are you prepared to put on any evidence on either of those matters Mr. Derringer?" David Derringer: "Your honor, I can't represent anyone but myself". Clearly, Judge Fitch had already established that Norma Nevitt and Susan Nevitt were not present in the courtroom, and even if Susan Nevitt [Plaintiff Pro-Se Federal Case CIV-02-1580] had been present, Judge Fitch could not have asked questions of "witness" David Derringer without Fitch's attorney present over any issues of federal suit CIV-02-1580. **F. LR 83.5 "A party who is represented by an attorney may not personally ...represent himself or herself unless otherwise ordered".** Clearly, in the **established absence** of Susan Nevitt-Plaintiff of CIV-02-1580, Judge Fitch believed that he could use his power as Judge to intimidate "witness" David Derringer (David Derringer is a witness to the sexual harassment of Susan Nevitt by Thomas Fitch) in the open courtroom of Catron County Case CV-94-10, to divulge information regarding the Federal Complaint of his own personal federal suit CIV-02-1580, wherein Fitch is Defendant. This constitutes ex-parte communication in violation of Rule 16-402, with the witness of federal court in the absence of the "Plaintiff". In re Starcher, 193 W.Va. 470, 457 S.E.2d 147 (1995) This clearly violated **federal Rules**, Code of Judicial Conduct Canon 1-3, 4(A)(1)(2)(3), 5, 6, and mis-use

of power and authority of a Judge without jurisdiction or judicial capacity to violate federal Rules; illegal and continual "personal" and "extra-judicial" mis-use of power. In re Vandlinde, 179 W. Va. 183, 366 S.E.2d 631 (1988).

When the terrorism and intimidation from Thomas Fitch did not seem to be stopping the **legal** Pro-Se representation of the Defendants of CV-94-10, Thomas Fitch decided to further violate his oath of office, Code of Judicial Conduct and attack the Defendants with a direct denial and deprivation of the rights of due process and equal protection of the US Constitution 14th Amendment, and to "enslave" them to his court in violation of the US Constitution 13th Amendment, and continually subject the Defendants to the abuse of process and malicious prosecution of the Chapels with Fitch's help; a clear violation of the US Constitution 13th Amendment, by ordering them to "ask Fitch" whether they could have due process at any time; clearly a totalitarian dictatorship controlled by unethical Fitch. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." ; Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

Fitch cleverly believed that he could both assist the continued fraud of the Chapels and help himself at the same time stop the federal litigation against himself, by simply mis-using his powers as Judge to "order" the Defendants to stop litigation in

any court in the United States, by himself putting a stop to it, or threatening to throw them in jail (*as he had already planned to kill David Derringer in the Catron County jail by food contamination or other "accidental death"*) for "contempt" of his "order" denying their rights to "file complaints, motions, pleadings, discovery requests, or other papers" and his clever attempt to stop them financially by "ordering" no available Pro-Se adversarial litigation to be further available for them. He slyly placed in his order that they had to have the "prior approval of the court" and since he was the Judge, that refused to recuse under the mandates of Rule 1-088.1(D), knew that he had the Defendants "contained" in his court for any further abuse he could perpetrate upon them, with no ability of their escape to a fair or equitable court or judge. US v. Griffin, 84 F.3d 820 amended CA7 (Ill.) 1996 "Judge should be disqualified from proceeding where circumstances raise reasonable questions about his or her impartiality, regardless of his or her state of mind or ability to conduct fair and impartial trial." ; US Citizen. State v. Marden, 673 A.2d 1304 Me. 1996 "No judge should preside in case in which he is not wholly free, disinterested, impartial and independent."; Purpura v. Purpura, 847 P.2d 314, 115 N.M.80 cert denied 847 P.2d 313, 115 N.M. 79 "N.M. Ct. of Appeals 1993 "If judge becomes so embroiled in controversy that he or she is unable to make fair and objective decision, judge must recuse himself or herself. SCRA 1986 1-011, SCRA 1986, Canons 21-300 Subd. A(3) 21-400"; Petition of Wittrock, 649 A.2d 1053 (Del.) Supra. 1994 "Every litigant is entitled to be heard by a disinterested judge."

This diabolical plan was complete when Judge Fitch entered the Decision and Order of January 28, 2003 and then again on February 12, 2003, wherein Fitch has acted to subvert and

attack the US Constitution 14th Amendment, and to attempt to set New Mexico Case laws against the rights of US citizens to have equal protection, due process and self representation in the courts of the United States. Clearly, as the January 28, 2003 "order" shows, Judge Fitch attempts to mis-use his powers to defy and deprive US Constitutional rights, and to mis-use his powers to "order" a stop to the federal litigation against himself. [*page 1 "order"-"Indeed, another suit not listed in the motion was filed recently by Susan Nevitt in the federal court". This directly references Susan Nevitt v. Judge Fitch Federal Case CIV-02-1580 wherein Judge Fitch attempts to save himself, his own financial assets, and his position, by ordering Susan Nevitt not to litigate against his criminal and unconstitutional acts against the United States Constitution*] Judge Fitch then ordered attorney fees on February 28, 2003 to additionally punish the Defendants for the "WHISTLEBLOWING" litigation that was uncovering the criminal acts of Judge Fitch in correlation with the Chapels and disclosing the public corruption of the New Mexico court system, each justice protecting the other corrupt justices to circumvent the laws in protection of the racketeering industries undercover in New Mexico. This court seeks to aid and abet this illegal protection with the condoning of the cruel and unusual punishment of attorney fees, meant, in reality, to stop the litigation of "whistleblowing" on the corruption by financially attacking the "poor" Pro-Se Defendants.

In sum, this Court of Appeals only had to answer one question before they ruled in Memorandum Opinion of June 27, 2003 and that is: Whether they were going to uphold all US

Constitutional Rights of due process and equal protection, and uphold the New Mexico Constitution Article 2 Section 18 in due process and equal protection, and uphold NM Constitution Article 16 and statute 72-5-39 as the NM Mexico State oath of office mandated, to support the US Constitution concerning "equal protection", as the Court of Appeals justices had sworn to God that they would uphold the Constitutions and state laws and to allow legal litigation that exposes the corruption of Chapels and Judge Fitch; or to violate and then unconstitutionally attack the clearly established Defendants' rights under the US Constitution 13th and 14th Amendments to attempt to subvert, remove, defile, subjugate, enslave and oppress any American's rights to Pro-Se representation, due process, and equal protection, freedom, liberty, Civil Rights, a fair and impartial judge and court, and to instead enter into the criminal and civil conspiracy with the Chapels and Judge Fitch to continue to allow Chapels to violate state laws with a 14.3 foot dam and use that violation to enslave and deprive the Defendants and to punish the legal Pro-Se litigants by illegal attorney fees to get them to stop disclosure of the corruption and violations of laws in this matter and to force submission to the fraud by using attorney fees as a vehicle to stop the Defendants? The answer to this question under US Constitutional law was that the justices of the Court of Appeals could **absolutely not** violate the US and NM Constitutional laws or allow water statutes to be violated by Chapels to cause involuntary servitude against the Defendants and could not use attorney fees as an illegal financial vehicle to obstruct legal litigation over the corruption. Yet the Memorandum Opinion

of June 27, 2003 attacks the US Constitution and all that America stands for, and attempts to illegally use the No. 23,815 from the same Constitutional violations of the same Court of Appeals justices, in order to ignore and subjugate all Constitutional and state water laws so that Chapels can prevail, in direct defiance of state oath, Code of Judicial Conduct Canon 3 (B)(2) and the ethics of a Judge to uphold, treasure, protect, and defend the US Constitution against all enemies foreign or domestic, or be immediately removed from public office forever under the **MANDATE** of the US Constitution 14th Amendment Section 3. *Canon: "Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us."* Such attack on the US Constitution mandates all salaries be stopped,[28] for such decisions against the 14th Amendment, by the mandates of the 14th Amendment itself Section 4. Tucker v. Outwater, 118 F.3d 930 cert denied 118 S. Ct. 562, 522 US 997, 139 L.Ed.2d 402 "Judge will be **denied immunity for damages where he acts in clear absence of all jurisdiction, and knew or must have known that he was acting in such manner.**"

To take 14th Amendment rights of due process, equal protection of all laws, and the inherent rights of an American to represent themselves Pro-Se in any United States court of law is

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14th Amendment Section 4: "But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

overstepping both jurisdiction and judicial capacity and entails such orders as an **ENEMY OF THE UNITED STATES** when a direct attack is made on the US Constitution 13th and 14th Amendment, when any justice attempts to set case laws **against** the US Constitution and then attempt to use attorney fees as a vehicle to financially ruin the Defendants to affect the stop to litigation that uncovers the fraud of the courts in collusion with the fraud of the Chapels' violations of state laws. The Memorandum Order of June 27, 2003, in fact became "mistake", "fraud" and is "void" by Constitutional law under Rule 1-060(b)(1)(3)(4) wherein this Court of Appeals assisted the criminal Fitch to attempt to set case laws against the United States Constitution 13th and 14th Amendments and attempts to prevail in such treason by ordering attorney fees to punish the Defendants legal litigation. Since the Constitutional prerequisites forbid and prohibit an "injunction" against statutory rights of citizens due to such illegal orders abridging and denying preformed rights and privileges guaranteed by statutory laws and Constitutional guarantees, the entire basis of CV-94-10 is fraud, and the violations of Constitutional provisions is sedition. The attempt to subjugate and enslave the Defendants by attorney fee financial punishment for litigation is cruel and unlawful punishment not available to this or any other court as a means to stop the "whistleblowing" on the public corruption intertwined here. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

ARGUMENT

This court is well aware of all case laws that mandate the recusal of Judge Fitch, simply to allow the Defendants an impartial judge and a fair trial in a court of law in these United States, and yet the Court of Appeals desires Judge Fitch to continue to be able to persecute the Defendants as this Court is now doing in violation of the 14th Amendment by punishing the Defendants for their legal representation by unlawful attorney fees. Beal v. Reidy, 80 N.M. 444, 457 P.2d 376 (1969) "Prejudiced or biased judge would deprive party of due process of law."; Petition of Wittrock, 649 A.2d 1053 (Del.) Supra. 1994 "Every litigant is entitled to be heard by a disinterested judge." The case record of CV-94-10 is overflowing with factual basis of "personal" and "extra-judicial" reasons for recusal of Judge Fitch, as well as the mandated removal due to Code of Judicial Conduct and Constitutional violations requiring recusal under Rule 1-088.1(D) *"No judge shall sit in any action in which his impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct, and shall recuse himself in any such action."* Clearly, to any rational being, violating the 14th Amendment of the US Constitution with direct "Order" to deprive rights and privileges is a violation of the NM Constitution and the Code of Judicial Conduct and this court cannot punish the Defendant with attorney fees for defense against such unconstitutional orders. State ex rel Stratton v. Sinks, 106 N.M. 213, 220, 741 P.2d 435, 442 (Ct. App. 1987) "substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion".

It is without doubt that Judge Fitch intends to stop all due process in America for the Defendants-Appellants with his

orders of January 28, 2003 and again on February 12, 2003 wherein it is ordered: Defendants are enjoined "from filing further **complaints, motions, pleadings, discovery requests, or other papers**" and to unconstitutionally prohibit the Defendants from self representation Pro-Se in the courts of the United States; a clear violation of Canon 3 (B)(2) and then additionally damages and punishes the Defendants by the Order of February 28, 2003 for additional attorney fees. It is clear that the criminal Fitch has no intention of ever granting any request for due process pleadings from the Defendants in his court, as his deprivations of due process are intended for the Chapels to continually sue the Defendants with their illegal dam, and win illegal damages until the Defendants are obliterated from this state in Constitutional violation. The attorney fees are simply one more mis-use of power to damage the Defendants to stop the litigation disclosing the fraud. Judge Fitch has already illegally used his power as judge to attempt to stop the federal litigation against him Susan Nevitt v. Judge Fitch federal Case CIV-02-1580 by his "order" of January 28, 2003 wherein he directly references his own **PERSONAL federal case as a reason** to deny due process to Susan Nevitt. The only federal suits in federal court from Susan Nevitt are Susan Nevitt v. Judge Fitch CIV-02-1580 and Susan Nevitt v. Thomas Fitch CIV-03-0155.

Therefore, this Court of Appeals condones, aid and abets the direct attack on the US Constitution 13th and 14th Amendment by Judge Fitch, and gives illegal aid and comfort to Judge Fitch as an enemy of the United States, to assist Judge Fitch and the Chapels to stop the Defendants litigation by the illegal attorney

fee damages meant to discourage any further "whistleblowing" on the public corruption of the New Mexico courts, and uses their own violations of the 14th Amendments of No. 23,815 that is not even legal case law. This court, in collusion with the Chapels and Judge Fitch, intend to stop and destroy the ability of the Defendants-Appellants to "fight back" against the criminal onslaught of the Chapel/Judge Fitch conspiracy, by making it impossible for the Defendants to continue in financial ruin. Clearly, this Court of Appeals is intent on aiding the United States enemy of the Constitution for Judge Fitch to succeed in denial of a fair court of law to present any evidence of defense, and condones Fitch's non-compliance with the Rules of Civil Procedure Rule 1-088.1(D) so that the Defendants can be enslaved to Fitch's totalitarian dictatorship over them in violation of the 13th Amendment, preventing the Defendants "self defense" of their own property by use of their US Constitutional rights under the 14th Amendment, Title 42 U.S.C. Section 1981(a) and the NM Constitutional rights under Title 2 Section 18 by assisting the financial ruin of the Defendants by assisting illegal attorney fees. Hence, these Court of Appeals justices, as Judge Fitch, are subversive, within the meaning of violations of Rules 21-300(2)(5)(7), and are criminally involved with Fitch in insurrection and rebellion against the US Constitution 13th and 14th Amendment, and against the NM Constitution Article 2 Section 18, to steal the due process and equal protection from the Defendants, so that the Chapels can continue to violate state statutes 72-5-32 and 72-9-3 with a statutorily violating dam of 14.3 feet without permit, and without the engineered safety design before

construction, in total violation of 72-5-39 and the NM Constitution Article 16, and to allow the Chapels to subjugate, enslave, and cause involuntary servitude of the Nevitt/Derringers to destroy their private property rights for legal stock ponds, and their road of necessity to their home, all located on private property outside of the jurisdiction of Judge Fitch, Chapels, and the justices of this Court of Appeals by the mandates of Title 42 U.S.C. Section 1982.

By the illegal attempt of this court to use No. 23,815 as case law to support No. 23,965 in the Memorandum Opinion of June 27, 2003 it is clear that all involved justices are treacherous, and revolutionary, and are enemies of the United States in sedition, treason, and insurrection of the US Constitution, and subject to direct removal from public office under the 14th Amendment Section 3, and subject to Civil Rights suit under Title 42 U.S.C. Section 1983 and Title 42 U.S.C. Section 1986 without judicial immunity, since the US Constitution was "**sworn**" to be upheld by such justice in each oath of office filed with the New Mexico Secretary of State. **SEE** United States Constitution 14th Amendment Section 3. Clearly, illegal use of No. 23,815 is a direct violation of Canon 1-3, and Canon 3 (B)(2).

The Memorandum Opinion of June 27, 2003 violates not only the 14th Amendment of due process and equal protection of the laws and under Title 42 U.S.C. Section 1981(a), but also violates the 13th Amendment of the US Constitution by taking the rights of the Defendants to have opportunity to litigate without the threat of illegal sanctions or attorney fees being assessed against them to stop the "whistleblowing" of the

corruption and illegal acts of the Chapels.

The Court of Appeals uses illegal attorney fees to punish and stop the Defendants' litigation in order to protect a fellow Judge that has been involved in criminal acts including sexual harassment, criminal stalking, death threats, intimidation, and telephone harassment, and will stop at nothing to persecute and punish the Defendants for the disclosure of these illegal acts of public corruption by legal litigation. This Court of Appeals, in bias and violation of Constitutional rights, disavows the evidence and all Constitutional, statutory, and case laws on the side of the Defendants, to use the ability of unlawful punishment to stop the attack on the racketeering going on in violation of the RICO ACT of Title 18 U.S.C. Section 1962 that also discloses the proven fraud and perjury of the Chapels.[29] In re A.tl Robins Co. Inc., 97 BR 525 ED.Va 1995 "Bias" is

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It is admitted in court record and in Deposition of Mick Chapel in 1994, long before the trial of CV-94-10 in April, 1996, that the Chapel dam was not the Frank Armijo dam, and that it was in statutory violation of over 10 feet and impounding over 10 acre feet of water. Additionally, on May 22, 1995 the State Engineer proved the Chapels' dam not the Frank Armijo dam and that it was 14 feet without permit and without the mandated engineered design before construction in violation of 72-5-32 and 72-9-3. This Court of Appeals ignores the proven fraud and perjury of Chapels in CV-94-10 and additionally condones the violation of state law 72-5-39 and the New Mexico Constitution Article 16 that forbids the Chapels to keep a dam in statutory violation. Hence, the Court of Appeals is equally as corrupt against the state water laws as Judge Fitch, knowingly allowing Chapels to violate water law when the Constitution Article 16 prohibits these acts, as does the oath of office of all justices. **NMSA 1997, Repl. Pamp., 72-5-39, "No person shall use the public waters of the state of New Mexico except in accordance with the laws of the state of New Mexico.**

condition of mind, which sways judgement and renders judge unable to exercise his functions impartially in particular case." Clearly, this court is in collusion with the Chapels and Judge Fitch to violate laws and Constitution. **SEE As a statement to Notify the Court record**: on page 3.

As pointed out in all case laws and the United States Constitution 14th Amendment, David Derringer could not be precluded from CV-94-10 in the original trial of 1996 and his property illegally seized with the jurisdictionally defective Judgement and Injunction of May 17, 1996, without the Case CV-94-10 being jurisdictionally defective, illegal, and unconstitutional. Holguin v. Elephant Butte Irrigation District, 91 N.M. 398, 575 P.2d 88 (1977) Without the proper parties involved in the suit, the case has the defective inability to proceed and must be dismissed.; E.G. Perez v. Gallegos, 87 N.M. 161, 530 p.2d 1155 (1974); Richins v Mayfield, 85 N.M. 578, 514 p.2d 854 (1973) "Rule 19 does not expressly state whether such an inability to proceed is a jurisdictional defect, but we have always held that it is."; State Farm Mut. Auto. Ins. Co. v. Foundation Reserve Ins. Co., 78 N.M. 359, 431 P.2d 737 (1967) "New Mexico makes no distinction between necessary and indispensable parties; if person's interests are necessarily affected by judgement, such person is indispensable party."; Richins v Mayfield, 85 N.M. 578, 514 p.2d 854 (1973) "failure to join an indispensable party renders the suit defective."; Holguin v. Elephant Butte Irrigation District, 91 N.M. 398, 575 P.2d 88 (1977)"Without an indispensable party before judgement, this is a jurisdictional defect making the case inherently defective, and the "supreme court has always held that it is". ; Montoya v. Department of Finance & Administration, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982)"the non-joinder of a party will result in the dismissal of a cause of

action, where the party's absence will prevent the court from granting complete relief, significantly impair the interests of the absent party or expose litigants to possible multiple liability or inconsistent obligations."; Herrera v. Springer Corp. 85 N.M. 6, 508 p.2d 1303 (Ct. App. 1973). "The court cannot proceed upon to judgement in the absence of any indispensable parties". The Court of Appeals wishes to ignore these case laws and the US Constitution 14th Amendment and to keep punishing the Defendants by illegal attorney fees to continue to stop the ability to gain due process of the 14th Amendment rights available to them by Constitutional law. This will clearly have the affect to keep the Chapels' illegal claim to water and the wrongful Injunction denying the equal protection rights of the Nevitt/Derringers to legal stock ponds intact. Justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry are bound under oath and under the Code of Judicial Conduct Canon 3 (B)(2) to enforce Constitution and the laws of New Mexico and instead choose to attack the Defendants right to litigate by unlawful attorney fees. David Derringer's statutory rights to stock ponds were stolen from him in CV-94-10 without opportunity to be heard, and his property illegally seized by CV-94-10 Judgement of May 17, 1996 of which he was a **NON-PARTY**, and legal litigation over these matters cannot be punished by attorney fees. This Court of Appeals simply wishes to protect the Chapels and the Judge Fitch Judgement and Injunction of May 17, 1996 by violation of David Derringer's 13th and 14th Amendment rights by seeking to stop any further litigation in collateral attack of this illegal, unconstitutional and jurisdictionally defective act by as much financial damage as possible by attorney fees. Chavez v. County

of Valencia, 86 N.M. 205, 521 P.2d 1154 (1974) "Attack on subject-matter jurisdiction may be made at any time in the proceedings. It may be made by a collateral attack in the same or other proceedings long after the judgement has been entered." David Derringer was never subject to this "injunction" by the case laws of the New Mexico Supreme Court. Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action."; Allen v. McClellan, 77 N.M. 801, 427 P.2d 677 (1967) "No court can make a decree which will bind anyone but a party; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen."

This Court of Appeals defies and disregards the case law NMSA 1978, 72-5-39, (with punishment under NMSA 1978, 72-8-4, 72-8-6, and 72-12-11) and the New Mexico Constitution Article 16, so that Chapels can continue to keep and use their dam which has been clearly proven and documented to be in violation of state laws 72-5-32 and 72-9-3[30] and combines with the Chapels to punish the Defendant for continued litigation with the financial damage of attorney fees. Simply put, the Chapels cannot have a 14.3 foot dam in violation of state laws, no matter how much this Court of Appeals intends to illegally protect them and the Defendants can continue to litigate against the violations of state laws as citizens concerned about the

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To violate 72-5-32 and 72-9-3 to construct a 14.3 foot dam without permit, and then use public waters from the impoundment pond for irrigation without permit also violates 72-5-1, 72-5-24 and 72-5-39.

public welfare and public interest of New Mexico. Millheiser v. Long, 10 N.M. 99, 61 P.111 (1900). "Private ownership of water in public streams was prohibited, and a right to use of waters for beneficial purposes was given to those who appropriated and applied them to such uses."; State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951) "Illegal use of public waters does not create any right to continue use since statutory manner for securing right to use public waters is exclusive." ; Young v. Hinderlinder, 15 N.M. 666, 110 P. 1045 (1910) "To be contrary to public interest, project need not be menace to public health or safety; requiring water in excess of amount unappropriated in stream is contrary to public interest."As the Constitution of New Mexico Article 16 prohibits any use of New Mexico waters while in violation of any statute, the statute NMSA 1978, 72-5-39 prohibits any use of New Mexico waters while in violation of state statutes, all case laws of New Mexico and federal laws prohibit any use of New Mexico waters while in violation of state statutes, and the Chapels are mandated to comply with all statutes whether they have a CV-94-10 judgement and injunction or not, the Defendants have a legal right to litigate against the Chapel water fraud, and illegal attorney fees cannot be used to dissuade that right. State ex rel. Reynolds v. South Springs Co. 80 N.M. 144, 452 P.2d 478 (1969) "Owner of water right has duty to comply with law."; Little v. Price, 74 N.M. 626, 397 P. 2d. 15 (1964) "Defendant who built a dam without obtaining the permit required hereunder (NMSA 1978, 72-5-1)...was liable for damage". Thus, despite the penchant of this Court of Appeals to protect the Chapels violations of water laws with their 14.3 foot dam by punishing the Defendants into financial ruin, the Court of Appeals cannot violate all Constitutional, statutory and case laws to protect the

Chapels' violation of water laws by continually assessing attorney fees as a vehicle to stop the litigation against this fraud and public corruption to take the 14th Amendment rights away. **SEE** the oath of office filed with the New Mexico Secretary of State for all justices Alarid, Fry, and Pickard. The Code of Judicial Conduct Canon 3 9B)(2) specifically states: "A judge shall be faithful to the law" as defined by Canon: ***Canon: "Law" "denotes court rules as well as statutes, constitutional provisions, and decisional law."*** and the mandates of the New Mexico Supreme Court that no-one can use New Mexico public surface water in violation of state statutes, forces this court not to assess attorney fees against litigants attempting to enforce state law. State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be." So this Court of Appeals cannot ignore the Chapels violations of state water laws and allow the use of these violations against the Constitutional rights of the Defendants due to the 14th Amendment of the United States Constitution that the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry "**swore to God**" under state oath that they would protect and enforce the "**EQUAL PROTECTION**" of all laws, and cannot assess attorney fees for Pro-Se attempts to enforce these same laws. The Court of Appeals purposefully ignores that stock ponds in New Mexico are an inherent right by statutory mandates, and ignores that since the Defendants have a Constitutional right to stock ponds under the "equal protection" of the laws, they

cannot legally dissuade legal litigation of the Defendants in attempts to protect their own Constitutional rights by attorney fees meant to punish the Pro-Se litigants from protection of their own property rights under Title 42 U.S.C. Section 1982. It is clear that to order attorney fees is simply judicial terrorism and persecution of litigants exercising their 14th Amendment rights under Constitution. Since, clearly the stock ponds of the Nevitt/Derringers are in statutory compliance of under 10 feet and impounding less than 10 acre feet of water if filled, they are protected by NMSA 1997, 72-5-32 and 72-9-3, and are thus outside of the jurisdiction of the Courts for injunction against, destruction of, or ability to gain entrance to the private property by reasons to enforce an illegal and unconstitutional injunction against them, and the Defendants have a right to protect these assets by court litigation without punishment. Since both dams (under 10 feet) contain private, historical, roads of necessity, over the creek to access the other side of the private property, this Court of Appeals has no jurisdiction to order, or confirm any attempt at their destruction without the consent of the owners of the private property, which this court does not have or to persecute the Defendants for ownership thereof. Manning v. Port R.R. Co (1986) 54 NJ Eq. 46, 33 A 802 that the **Court held that it "did not have the power to block an existing right-of-way by necessity, previously used by the owner."** In Douglas v. Jordan (1925) 232 Mich 283, 205 NW 52, 41 ALR 1437 "that a way of necessity became fixed in location across the lands and it could not be changed without the consent of the owners." Since the dams are legally compliant with 72-5-32 and 72-9-3, are guaranteed to the Defendants by the statutory wording, this Court of Appeals

has to uphold statutory law, and the "equal protection" of those laws for the Defendants under the mandates of oath of office, Code of Judicial Conduct Canon 3 (B)(2) and compliance with the US Constitution 14th Amendment and the New Mexico Constitution Article 2 Section 18. State v. Southern Pacific Co., 281 P.29, 34 NM 306 "N.M. 1929 Statutes, though imperfect in form, should be upheld and sustained by the courts, if they can be construed as to give sensible effect and to render them of binding force." Since, under US CONSTITUTION, the courts do not have jurisdiction or judicial capacity over the legal stock ponds of the private Nevitt/Derringer property, to order punishment for litigation by attorney fees is a mis-use of power and abuse of discretion in direct violation of Title 42 U.S.C. Section 1986. Newsome v. Farer, 103 N.M. 415, 420, 708 P.2d 327, 332 (1985) "Abuse of discretion when the district court's decision is clearly untenable or contrary to logic and reason."

Each justice involved in this criminal and civil conspiracy for deprivation of Title 1983 and Title 1986 Rights is accountable in any action of violation of Civil Rights, and it is provable that the assessment of attorney fees are meant to preclude the "whistleblowing" that accompanies the litigation in this matter. Cameron v. Seitz, 38 F.3d 264, 1994 Fed. App. 356P "Judicial immunity may be overcome in only two sets of circumstances: First, a Judge is not immune from liability for non-judicial actions; ie. Actions not taken in judicial capacity. And, two, Judge is not immune from actions through judicial in nature, taken in the complete absence of all jurisdiction." The oath of office of justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry, wherein they swore to uphold the "equal protection" of the laws under Constitutional mandate would

insure no judicial immunity in any "whistleblowing" action in federal courts over the public corruption of this matter going on in state courts.

CONCLUSION

In the Memorandum Order of June 27, 2003, there are three Court of Appeals justices that violate their very oath of office meant to enforce, and "support the Constitution of the United States and the Constitution and laws of the State of New Mexico and that I will faithfully and impartially discharge the duties of the office of justice", and then subjugate, defile, terrorize, and cause insurrection to the basis of the United States Constitution by deprivation of both due process and equal protection of the laws. These justices, as Judge Fitch became "enemies of the United States" to attack the US Constitutional rights of the Defendants to "file complaints, motions, pleadings, discovery requests, or other legal papers", to be able to properly represent themselves Pro-Se in any court of law in the United States, and to have the equal protection of all laws, to include, but not limited to NMSA 1997, 72-5-32 and 72-9-3, and to be free and liberated citizens, allowed to own and control their own private property from criminal invaders intent on trespass and destruction of legal, historical, private, and statutorily compliant stock ponds, dams, and private roads of necessity to their own home on their own private land, protected by Title 42 U.S.C. Section 1982 and the "equal protection" rights under Constitution. The justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry have clearly entered into the Judge Fitch/Chapels conspiracy against rights to take from the Defendants their 14th Amendment and to even

attempt to use No. 23,815 as case law to support the illegal Memorandum Order of No. 23,965 when these same justices violated the 14th Amendment in that case, of which is still pending Motion for Reconsideration and not allowable as any case law to affect decisions in this case of No. 23,965. These justices are simply attending the public corruption of New Mexico outside of both jurisdiction and judicial capacity, violating 13th and 14th Amendment rights of the Defendants with no conscience, after blaspheming God himself in swearing to God to enforce and protect the Constitutions and laws of New Mexico, and then to discredit and attack that oath by ruling against every law to destroy the adversarial system and defeat justice in the United States to enforce corruption of the illegal 14.3 foot dam of the Chapels to subjugate and destroy the Defendants' lives. These justices' attempts to enslave, oppress, subjugate, and intimidate the Defendants from their Constitutional and Civil Rights and to persecute and penalize the Defendants with unlawful attorney fees directed as a punitive measure to stop their litigation against this fraud, is a direct violation of Title 42 U.S.C. Section 1985, and Title 42 U.S.C. Section 1986 wherein each justice is "neglecting to prevent" damages to the Defendants by egregious acts of violation of oath, violation of the Code of Judicial Conduct Canon 3 (b)(2) and an attack on America by sedition, treason, and mis-use of power of state judicial office to cause Constitutional rebellion.

In sum, the Court of Appeals justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry swore to God [**so help me God**], I will support the Constitution of the United States and the

Constitution and laws of the State of New Mexico, and then *blaspheme* to God himself by denial and deprivation of the Defendants-Appellants rights of due process, equal protection, the rights to file complaints, motions, pleadings, discovery requests, and other legal papers, both in self defense of suits and to initiate suits over unconstitutional and egregious acts committed against them and against all laws, and unlawfully punish the Defendants with attorney fees to force the Defendants to "back down" and let the public corruption of the New Mexico courts go rampant and unchecked. The Court of Appeals has all case laws and Constitutional laws before them to stop the Chapels from further continuation in violation of 72-5-32 and 72-9-3 and defiling the mandates of the New Mexico Constitution Article 16, and to OBEY the water laws, and instead protect, single-out and aids and abets the Chapels violations of state water laws by attempting to hide unlawfully behind the No. 23,815 that has not been established as case law, and which itself violates the 13th and 14th Amendment of the US Constitution by these same justices attempting to defeat truth and justice in that case to assist the crimes of the Chapels against the United States and against the water rights of the public of New Mexico.

As proven by all documents in Catron County Case CV-94-10, Mick Chapel knew that he was in violation of state water laws with an illegal 14.3 foot dam in 1994 and the OSE Memo of May 22, 1995 proving the Chapel dam at 14 feet, long before CV-94-10 in 1996, which proves that this criminal fraud has been attended by the public corruption of New Mexico for many years. Justices A. Joseph Alarid, Lynn Pickard, and

Cynthia Fry choose to violate the equal protection of the Defendants and all New Mexicans to protect this fraud, as a direct attack on the US Constitution and the judicial system, when the Code of Judicial Conduct and the New Mexico oath of office mandate this Court of Appeals to uphold statutory and the Constitutional laws of Article 16 to force the Chapels to comply with the laws of New Mexico at all times. State ex rel. Reynolds v. South Springs Co. 80 N.M. 144, 452 P.2d 478 (1969) "Owner of water right has duty to comply with law." ; State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951) Illegal use of public waters does not create any right to continue use since **statutory manner for securing right to use public waters is exclusive**. Clearly attorney fees cannot be awarded against the Defendants that use their legal rights of Pro-Se representation under the 14th Amendment to fight against this fraud in a court of law meant to protect them from this corruption.

Clearly, justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry have no honor to oath, Code of Judicial Conduct, or affinity for God himself to defy federal case laws and the New Mexico Constitution Article 16 and Article 2 Section 18, they swore to uphold and defend, and instead allow the Chapels to have, irrigate from, and use the 14.3 foot dam in violation of 72-5-32 , 72-9-3 and 72-5-39, to both violate the public of New Mexico, and to use this violation to enslave, take statutory rights, take Civil and Constitutional rights, and commit continual fraud against the Defendants, by use of this dam to deprive stock ponds legally available to the Defendants and then punish the Defendants with cruel and unusual attorney fees when the Defendants legally oppose the violations of state

laws and attacks on America. Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43 U.S.C.A. 372 et seq. The case laws of New Mexico prevent the decisions of June 13, 2003, but each justice disregards the laws before him and adheres to the Chapel/Judge Fitch conspiracy to destroy the rights of the Defendants. State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be."; Fort Sumner Irrigation District v. Carlsbad Irrigation District, 87 N.M. 149, 530 P.2d 943 (1974)"Court are not limited. No limitations have been placed by law upon power of district courts in these appeals to find facts, make conclusions of law and enter such judgements, orders and decrees as are proper to dispose of the issues."

This Court of Appeals has certainly not quoted any case laws or Constitutional provisions that allow the Chapels to have a 14.3 foot dam without OSE permit and without the mandated safety engineered design before construction, nor has this Court of Appeals quoted any authority that grants the Chapels the use of an illegal dam/pond to over-ride the NM Constitution Article 16 or to over-ride the "equal protection" of the laws of New Mexico affordable to the Defendants and every other US citizen, so attorney fees cannot be awarded to persecute the Defendants in violation of their rights to litigate.

THEREFORE, the Memorandum Opinion of June 27, 2003 is

in direct attack on the US and NM Constitutions and direct violation and insurrection of the 14th Amendment rights of the Defendants. Instead of "honestly, faithfully, and competently performing their functions as public servants" (Nixon v. Warner Communications Inc. 435 U.S. 589 (1978)), the malicious, direct, and premeditated violations of Constitutional law by the justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry mandates removal from the bench under the Order of the U.S. Constitution 14th Amendment Section 3 and legally force a new trial and reconsideration of the matters of attorney fees in No. 23,965. Such sedition and treason against the US Constitution by justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry is beyond reproach, but vile and reprehensible to swear to God not to defile an American under oath to protect the US and NM Constitution and state laws, and then enter into a conspiracy with Chapels and Judge Fitch to defeat the justice system in the United States with a mis-use of powers as judge to take the Constitutional rights from the Americans to aid the racketeering under the meaning of the RICO ACT of Title 18 U.S.C. Section 1962 and to assist the violations of the Chapels under Title 21 federal Controlled Substances Act. The litigation of the Defendants is construed as "WHISTLEBLOWING" protected by federal law Whistleblower Protection Act of 1989, disclosing the public corruption of New Mexico courts and No. 23,965 attempts to stop the Defendants by financial damages of unlawful attorney fees to preclude the continuation of the legal litigation that is exposing all of the corrupt members of the Chapel conspiracy against rights and against the water laws designed to protect the New Mexico public. *Canon: "Our*

legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice ad the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law." The Defendants are entitled to a fair and impartial judiciary. US v. Griffin, 84 F.3d 820 amended CA7 (Ill.) 1996 "Judge should be disqualified from proceeding where circumstances raise reasonable questions about his or her impartiality, regardless of his or her state of mind or ability to conduct fair and impartial trial." ; US Citizen. State v. Marden, 673 A.2d 1304 Me. 1996 "No judge should preside in case in which he is not wholly free, disinterested, impartial and independent."; Purpura v. Purpura, 847 P.2d 314, 115 N.M.80 cert denied 847 P.2d 313, 115 N.M. 79 "N.M. Ct. of Appeals 1993 "If judge becomes so embroiled in controversy that he or she is unable to make fair and objective decision, judge must recuse himself or herself. SCRA 1986 1-011, SCRA 1986, Canons 21-300 Subd. A(3) 21-400"; Petition of Wittrock, 649 A.2d 1053 (Del.) Supra. 1994 "Every litigant is entitled to be heard by a disinterested judge." Since the justices in both No. 23,815 and No. 23,965 are corrupt by attacking the US Constitutional 14th Amendment rights of the Defendants which they swore to God to uphold, these cases are required to be heard by fair, equal, and independent justices in the New Mexico Court of Appeals that will honor their oath of office to comply with the US and New Mexico Constitutions

and laws of New Mexico, or mandate the removal of this case to a federal court, since the 14th Amendment rights of the Defendants have been extremely violated by justices A. Joseph Alarid, Lynn Pickard, and Cynthia Fry in collusion with the Constitutional rebellion of the Judge Fitch/Chapel conspiracy. **SEE** Monroe v. Pape, 365 US 167 (1961) **SEE** also 42 U.S.C. Section 1985 and 42 U.S.C. Section 1986.

Respectfully submitted by /s/David Derringer, Susan Nevitt, Norma Nevitt Pro-Se, Box 157, Quemado, New Mexico 87829

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Sup. Ct. No.28,173
Ct. Ap. No. 23,815
Catron County Case CV-94-10

MICK C. CHAPEL AND JENNIFER CHAPEL
Plaintiffs-Respondents,
vs.
SUSAN NEVITT,
NORMA NEVITT and
DAVID DERRINGER
Defendants-Petitioners,

PETITION FOR WRIT OF CERTIORARI TO THE NEW MEXICO COURT OF APPEALS

Submitted by:
David Derringer, Susan Nevitt, and Norma Nevitt Pro-Se
P.O. Box 157
Quemado, New Mexico 87829
July 11, 2003

Pursuant to SCRA 12-502(A) 2002, the Plaintiff-Petitioners David Derringer, Susan Nevitt, and Norma Nevitt, representing themselves Pro-Se, respectfully asks this Court to grant this Petition for Writ of Certiorari in Mick C. Chapel and Jennifer Chapel, v. Susan M. Nevitt, Norma J. Nevitt, and David Derringer, Court of Appeals No. 23,815 (and to also reference the parallel case No. 23,965) showing Constitutional and Civil Rights deprivations and the direct attack on the United States of America. This Petition is timely filed on July 11, 2003. Rule 12-502(B) NMRA 2002.

DATE OF ENTRY OF DECISIONS

The New Mexico Court of Appeals decision was filed on June 18, 2003. The Motion for Rehearing Denial was filed on July 2, 2003. Copies are attached with this Petition.

QUESTIONS PRESENTED FOR REVIEW

B

Whether the Court erred in subjecting the Petitioners to deprivations and violations under the 13th Amendment wherein the Petitioners cannot be enslaved, be subject to selective cruel and unusual punishment, or involuntary servitude be created against them and their legal, and statutorily compliant stock ponds legally available to them under the "equal protection" of NMSA 1997, 72-5-32 and 72-9-3, on their real and personal private property under Title 42 U.S.C. Section 1982, based on Chapels violations of state laws with an illegal dam of 14.3 feet without permit and without the mandated safety engineered design and prior approval before construction of any dam over 10 feet pursuant to NMSA 1997, 72-5-32, 72-9-3, 72-5-39 and the NM Constitution Article 16, wherein no one can violate the "exclusive" statutory mandates, pursuant to the NM Supreme Court No. 6524, without being fined and jailed under NMSA 1978,

72-8-4, 72-8-6 and 72-12-11; and whether the Defendants-Appellants can be enslaved to the court of Judge Fitch, when not only had he been **mandated** to recuse many times under Rule 1-088.1(D) but also wherein he had "ordered" direct deprivation of the 14th Amendment Constitutional rights for due process and equal protection under the 14th Amendment and under the NM Constitution Article 2 Section 18, and wherein he cannot give a fair and equitable trial due to bias and prejudice, and wherein Fitch has attacked the US Constitution to overthrow the United States in case laws against clearly established rights and privileges, and has precluded due process or available Pro-Se legal representation before him in order to assist abuse of process and malicious prosecution of the Chapels continual use of their illegal 14.3 foot dam.; and can the Petitioners be enslaved before the NM Court of Appeal justices Alarid, Fry, and Pickard when these three justices had already deprived and denied due process and equal protection and wherein the Petitioners had already requested the matter be either moved to justices that would honor their oath of office and the laws or remand this matter to a federal court pursuant to Virginia v. Rives, 100 US 313, 318 (1880); Monroe v. Pape, 365 US 167 (1961) ?

C

Whether the Court erred to "order" deprivation of the US Constitution 14th Amendment for "equal protection" and deprivation of "equal protection" of the laws under the NM Constitution Article 2 Section 18 to allow the Chapels to continue to violate NMSA 1997, 72-5-32, 72-9-3, 72-5-39, 72-5-1 and to violate the NM Constitution Article 16 with a 14.3 foot dam without permit or the mandated (under 72-5-32) safety engineered design and approval of the state engineer prior to the construction of any dam over 10 feet, wherein the Court violated and attacked the statutory meaning and spirit of

federal law Title 42 U.S.C. Section 1981(a) "equal protection" to render it moot, and to violate oath of state office and the Code of Judicial Conduct Canon 3 (B)(2), to apply and enforce the Constitutions and the case laws already established by the higher NM Supreme Court and the Federal courts of State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be."; and Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43 U.S.C.A. 372 et seq.; and could the Court of Appeals single out the Chapels as available to constantly violate state laws with impunity, while also singling out the Petitioners to deprive their inherent Constitutional and statutory rights by subjugation to the violations of state laws of the Chapels ?

D

Whether the Court erred to allow the prevention and deprivation of David Derringer's 14th Amendment rights of due process, also protected under the NM Constitution Article 2 Section 18, in the original trial [CV-94-10 Judgement and Injunction of May 17, 1996] of which all other decisions are based and unconstitutionally attack and attack his real property and legal, historical, and statutorily compliant structures located upon this property protected by Title 42 U.S.C. Section 1982 of which the Court has no legal jurisdiction or judicial capacity; and to then enslave and attack further David Derringer's real property, when he had been a NON-PARTY to the Judgement and Injunction of May 17, 1996 by unlawful deprivation

of due process or any means for collateral attack on this "jurisdictionally defective" judgement, and ignore the Code of Judicial Conduct Canon 3 (B)(2) to not abide by the NM Supreme Court case law Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action." that MANDATES that David Derringer is not bound, nor is his real and personal property not bound to the Judgement and Injunction of CV-94-10 of May 17, 1996 as a **NON-PARTY** (upon which all other decisions of CV-94-10 are based) ?

E

Whether the court erred in contending that res judicata and the law of the case CV-94-10 could over-ride and have precedence over: the US Constitution 13th and 14th Amendments, US Code Title 42 Section 1981(a), Title 42 Section 1982 Private Property Act rights, Title 42 Section 1983 Civil Rights protection, Title 42 Section 1985 Civil Rights derivations, Title 42 Section 1986 mandates to protect Constitutional and Civil Rights, and NM Constitutional mandates of due process, equal protection, slavery, the "exclusiveness" of compliance to state water laws in Article 16, statutory water laws demanding compliance under 72-5-39, and ignoring the mandated limitations of 72-5-32, 72-9-3, 72-5-1, 72-5-24, and 72-5-39 and that the CV-94-10 "res judicata" of Chapels' previous proven perjury and fraud violations of criminal laws NMSA 30-25-1, 30-28-2, AND 30-16-6 directly to the courts could deprive the Constitutional rights and Civil Rights of the Petitioners as United States citizens ?

F

Whether the Court erred in holding that justices Fitch, Alarid, Fry, and Pickard could mis-use their power as justices without either

jurisdiction or judicial capacity to attack the United States Constitution to deprive: due process, equal protection, Constitutional and Civil Rights, fairness and equity in a trial, "order" criminal acts of trespass and destruction of legal, statutory compliant, private structures on private property outside of their jurisdiction and judicial capacity, "order" the Petitioners to be persecuted and damaged and punished for ownership of legal, statutorily compliant and "private" stock ponds, and to "order" the private, statutorily compliant and legal only roads of necessity and legal stock ponds on the private, fenced, posted and personal and real property (under Title 42 U.S.C. Section 1982) to be criminally attacked; and not be immediately removed from office under the Mandates of the US Constitution 14th Amendment Sections 3 and 4 and not be prosecuted for "treason" under the US Constitution Article III Section 3 for attempting to set case laws in insurrection and attack on the 13th and 14th Amendment rights and US Code equal protection and Civil Rights of any American in the United States, and not be criminally prosecuted under NMSA 1962, 30-28-1, 30-28-2, 30-14-1, 30-15-1, and under Title 18 Section 241, Title 42 Section 1985, Title 18 Section 373, and Title 18 Section 1959, and mis-use their power to ruin the life of another ? **SEE: EXHIBIT 1** Federal Case CIV-03-0804

G

Whether the Court erred in contending that justices Fitch, Alarid, Fry, and Pickard could violate their state oath of office, Federal US Code Title 28 Section 453, and violate the Code of Judicial Conduct Canon 1-3, 3 (B)(2)(5)(7) to attack the US Constitution and deprive the Petitioners the equal protection of the Constitutions, statutory laws of federal and the state of New Mexico, and to rule against the case laws of federal and New Mexico that already mandated that Chapels can not take the statutory allowable and compliant stock

ponds from the Petitioners or inhibit use or ownership thereof, cannot use any NM public waters with a 14.3 foot dam without permit, cannot deprive David Derringer due process, cannot deprive the Petitioners a fair and impartial hearings for due process, cannot single out the Chapels as available to violate state laws and use those violations to enslave the Petitioners, cannot deprive the Petitioners equal protection of all laws, cannot single out the Petitioners for persecution-attack-judicial terrorism-domestic terrorism-criminal attack-hate crimes, and cannot deprive the Petitioners from filing complaints, motions, pleadings, discovery requests, or any other legal papers "Pro-Se" in any court of law in the United States of America, and cannot punish the Petitioners for ownership of any private, legal, and statutorily guaranteed structures, stock ponds, or private roads on their property pursuant to the equal protection of the 14th Amendment, Title 42 Section 1981(a), and the NM Constitution Article 2 Section 4 and Section 18 ?

H

Whether the Courts erred in contending that the Chapels could require the removal of the Petitioner's legal stock ponds when stock ponds in New Mexico are not only guaranteed to all citizens under NMSA 72-5-32 and 72-9-3, but wherein there is no statute or case laws that make stock ponds subject to downstream control of any other beneficial use of water including irrigation rights, such an erroneous decision rendering all New Mexico stock ponds extinct due to every stock pond in New Mexico having some other downstream water use, including the water owed to the state of Texas from watersheds in New Mexico all having stock ponds upstream ?

I

Since the Petitioners' stock ponds and roads over same are legal, statutory compliant, and within the size limitations allowable under

state laws, and since the Petitioner's property is private and without any other proprietary interest, contractual interest, or monetary interest and allowable for private property ownership under Title 42 Section 1982, and since the "equal protection" of the laws guarantees the stock ponds to the Petitioners pursuant to the wording intent of the legislature of 72-5-32 and 72-9-3, did the court err to work outside of jurisdiction and judicial capacity to infringe, intervene, and persecute the Petitioners wherein the Petitioners could not be punished, fined or assessed damages for personal, legal ownership of private structures outside of the jurisdiction of the Chapels and the courts, and wherein the courts cannot "order" criminal action of trespass and destruction of private property without prosecution under the criminal code of New Mexico and federal laws ?

J

Was it not a Constitutional and Civil Rights violation to take clearly established rights, privileges, and immunities from the Petitioners to use CV-94-10 abuse of process and malicious prosecution to deny Constitutional rights and penalize and persecute the Petitioners for private property ownership and are not the Chapels liable for extreme damages for stealing the stock pond water of the Petitioners with use of a dam in statutory violation pursuant to Frank Bond & Son of Reserve Minerals Corp. 65 N.M. 257, 335 P.2d 858 (1959), and are not the Chapels liable to the Petitioners for taking public water in violations of the statutes pursuant to Reynolds v. King, 63 N.M. 425, 321 P.2d 200 (1958) wherein the statutes are "exclusive" and compliance is mandated under the NM Constitution Article 16 ?

K

Is it not a conspiracy for the justices Fitch, Alarid, Fry, and Pickard to single out the Chapels to be allowed to take public water in violation of the statutes with a 14.3 foot dam without permit, and to

single out the Chapels not to be fined or jailed while in violation of the "**exclusive**" state laws, and to the allow the Chapels to use violations of state laws and the NM Constitution Article 16, to single out the Petitioners to deny, prohibit, and obstruct the exercise of the statutes for the Petitioners to own, use and enjoy their two legal, statutory compliant and private stock ponds, so that Chapels can enslave and control the Petitioner's real property and ruin the livestock business of the Petitioners ?

L

Is it not the duty, responsibility, legal requirement, oath of office, Code of Judicial Conduct responsibility and federal law mandate of Judge Fitch, Alarid, Fry, and Pickard to protect the US and New Mexico Constitution, obey all case laws, and apply the statutory laws of New Mexico as written to ensure due process and equal protection of all citizens in a fair an equitable court of law within New Mexico or be liable for Civil Rights suit under "action for neglect to prevent" ?

M

Since the Chapels are proven to have lied and conducted criminal fraud to a court of law by admitting to destruction of the Frank Armijo dam of Declaration #02311 in 1984 and admitting on June 14, 1994 and again in Deposition of October 12, 1994 that they had built a new dam well in excess of 10 feet and impounding twice the statutory limits of 72-5-32 and 72-9-3 without permit or engineered design before construction, and since it was proven by the OSE on May 22, 1995 that the Chapel dam was 14 feet in height, proven by the OSE on April 4, 1996 and again on June 19, 1996 that the Frank Armijo Declaration #02311 was INVALID and could not attain a pre-1907 water right, and then the Chapels have lied to a jury on April 22, 23, and 24th, 1996, and ever since that their still illegal dam

was not over 10 feet and impounded less than 10 acre feet of water, was not the Court in error to continue to allow the Chapels to criminally steal NM public waters under fraud, by hiding their decision to single out the Chapels to continue to break state laws under res judicata and the law of the case by use of jurisdictionally defective CV-94-10 a miscarriage used to defeat truth and justice and to use a "doctrine" to accomplish an obvious injustice, or applied where a previous decision clearly, palpably or manifestly was erroneous or unjust ?

N

Was the Court in error to allow Judge Fitch of CV-94-10, to still be able to stay on CV-94-10 and on the bench while in total violation of Rule 1-088.1(D), when Fitch has criminally attacked the Petitioners with intimidation of sexual harassment, phone harassment, death threats, murder attempts, orders to attack and trespass and criminally damage the Petitioner's private property, conducted illegal ex-parte communication and depositions of federal witnesses by mis-use of his court, and as a justice directly ordered deprivation of due process, equal protection and the inherent rights to represent oneself in a court of law in violation of the Constitutional 14th Amendment rights of the Petitioners and take their equal protection of the laws, and force them to be forever before the Judge that is a Defendant to them in five (5) federal suits for these same acts of attack on the United States of America, and still contend that it is proper due process and within a fair, equitable court and disinterested judge ?

FACTS MATERIAL TO THE QUESTIONS PRESENTED

Mick Chapel (as testified to in the Seventh Judicial District Court in CV-94-10 on June 14th, 1994 pages 78,79,94,95,98,105 and again in his Deposition of October 12th, 1994 pages 52,53,59,114,115) tore up the original Frank Armijo dam/pond in 1984, digging it deeper to

16-18 feet, pushing the dirt over the top to increase the dam to 25 feet and building it longer to encompass the 1/4 mile ditch (ditch #1) to the South to meet and encompass Harris Creek and to include Willow Spring drainage. This changed the once-existing "off-stream" small dam/pond of Frank Armijo originally 1/4 mile away from Harris Creek into a large "on-stream" dam/lake of Chapels in statutory violation of 72-5-32. Chapels admit to doing all of these illegal acts and doing them without any concern or permit from the Office of the New Mexico State Engineer and in total violation of state water laws which are "exclusive" and public water use is prohibited with any violation of any water statute. Chapels also admit both to diverting Harris Creek and creating a diversion from Willow Spring to run directly into their new pond all without permit under 72-5-1 or 72-5-24. Thus, Mick Chapel admitted to all of the violations of laws in court testimony of June 14, 1994 and in Deposition of October 12, 1994 well prior to CV-94-10 trial of April, 1996 that resulted in the fraudulent Judgement and Injunction of May 17, 1996 when the Chapels lied to the courts. The OSE proved the Chapel's dam at 14 feet on May 22, 1995, proved Chapels had no pre-1907 water rights on April 4, 1996 and again on June 19, 1996. The Chapel dam has been proven to be 14.3 feet by Hydroscience Inc. on February 12, 1999, proven at 14.3 feet by GPS survey of Quail Springs Survey Co. on June 21, 2001, and proven at 14.3 feet by AK Geoconsult Inc. by PHD Engineer/Hydrologist Alan Kunh on June 29, 2001 and proven that the Chapel dam had criminally trespassed water onto the Petitioners' upstream property in June 2001 due to the dam in violation of state laws being higher than the upstream property. The report of PhD Engineer/Hydrologist Alan Kuhn stated "*The land survey show that the average crest elevation of the Chapel Dam is 7661.0 and the elevation of the creek bed off the dam toe is 7646.7,*

giving a difference of 14.3 feet. Dams that are 10.0 feet or more in height must be designed by a licensed Professional Engineer and permitted by the New Mexico State Engineer." Chapels' criminal perjury and fraud is well documented in the state court records, and continues in federal court. The Chapel dam has violated state laws every day since 1984 of which "**each day of continued violation shall constitute a separate offense**", and Chapels are liable for damages against them under NMSA 1978, 72-8-4, 72-8-6 and 72-12-11.

The Petitioners purchased their property with two historical stock ponds that are shown on the USGS Map Gallo Mountains East Quadrangle, each of which is well under a 10 foot dam impounding less than 3 acre feet of water, proven by the survey of GPS of Quail Springs Survey Company on June 21, 2001, and each stock pond is located on private property and used for legal beneficial use of livestock watering, hence legally available to the Petitioners under statutory laws 72-5-32 and 72-9-3, and under "equal protection" under the US Constitution 14th Amendment, Title 42 Section 1981(a), and the NM Constitution Article 2 Section 18.The Supreme Court of New Mexico has previously had before it similar cases of violations of statutory laws and perjury regarding attempts to claim water illegally as the Chapels are doing, and the Supreme Court of New Mexico has always upheld the Constitution of New Mexico and all statutory laws.

NATURE OF THE CASE/ARGUMENT

This case involves Constitutional and Civil Rights deprivations that show a disrespect for the United States, human rights and "life" itself. The record shows the criminal proven perjury and fraud of the Chapels lying to a court jury in April, 1996 to gain an illegal, jurisdictionally defective and unconstitutional Judgement and

Injunction of May 17, 1996 with the deprivation of the 14th Amendment rights of David Derringer, and then unconstitutionally gaining a "wrongful injunction" against the Petitioners real property preventing the clearly established Constitutional rights of "EQUAL PROTECTION" of legal stock pond use and ownership within 72-5-32 and 72-9-3 by use of the Chapels' illegal dam of 14.3 feet in height in statutory violation enslaving and creating control of the private property of the Petitioners, wherein under federal law Title 42 Section 1982 neither the Chapels nor Judge Fitch have any jurisdiction. Because the Chapels sought to control and gain possession of the Petitioners' property, the Petitioners were unlawfully punished for legal ownership of the two stock ponds and subjected to illegal damages contending that the Chapels claim to downstream irrigation could prevent their use. The Chapels and the Courts ignored the Chapels illegal use of public waters when in violation of laws, wherein the statutes for water use are "**exclusive**" and the Courts continue to allow the Chapels to re-open CV-94-10 in abuse of process and malicious prosecution for persecuting the Petitioners for legal ownership of real property in the United States of America. As the Petitioners still defend their property legally in a court of law pursuant to the 14th Amendment and at the same time uncover the public corruption of the New Mexico courts and "racketeering" going on in Catron County, the Chapels, Joseph Manges and Judge Fitch have resorted to criminal acts of judicial and domestic terrorism and Orders to deny and deprive due process and equal protection in a court of law as undeniably are the Constitutional and Civil Rights of the Petitioners. Chapels are singled out in the United States to be above the laws, and to use those violations of laws against the rights of the Petitioners, and the Petitioners are singled out to persecute, harass, endure abuse of the courts, and be

subject to hate crimes, retribution of justices, and to be punished for ownership of legal stock ponds despite legal ownership available by existing state and federal laws. The Petitioners are forced before Judge Fitch that will not recuse so that the Petitioners will be forced to endure the constant re-opening of CV-94-10 until the Chapel/Judge Fitch conspiracy steals their real property by criminal damages assessed for ownership of the legal stock ponds, and until the Petitioners are murdered and/or forced from New Mexico. There is no fair, impartial, or court of equity that the Petitioners can escape to ensure justice is served.

The NM Court of Appeals was made aware of the Constitutional and Civil Rights attack against the Petitioners and the United States in the Docketing Statement **EXHIBIT 2.** The Petitioners pleaded with the NM Court of Appeals to "**read the record**" by moving the Summary Calender to a General Calender and were denied **EXHIBIT 3**. The Petitioners' response brief to the proposed Summary Affirmance **EXHIBIT 4** again clearly defined the Constitutional and Civil Right violations and deprivations and the singling out of the Chapels to violate state laws that was prohibited by statute, NM Constitution Article 16 and the NM Supreme court case law of State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be." , and that it was additionally prohibited by the federal case law of Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43

U.S.C.A. 372 et seq., of which the NM Court of Appeals had to obey under the Code of Judicial Conduct Canon 3 (B)(2) and their oath of NM judicial office. Again the NM Court of Appeals justices Alarid, Fry, and Pickard violated the US Constitution and the Civil Rights of the Petitioners. The Petitioners Filed a Motion to Stay all State Proceedings of CV-94-10 and Appeal until the federal courts ruled on the Constitutional and Civil Rights issues and the NM Court of Appeals refused to do so **EXHIBIT 5.** The Petitioners again stated the Constitutional and Civil Rights deprivations to the NM Court of Appeals in the second response brief of the parallel appeal No. 23,965 **EXHIBIT 6,** and wherein the justices would have no immunity for working outside of jurisdiction and judicial capacity to deprive Constitutional and Civil Rights of due process and equal protection by "order". After the attack on the United States in Order for denial and deprivation of due process, equal protection, criminal assault of the Petitioners and their property in the Memorandum Order of the NM Court of Appeals on June 18, 2003, the Petitioners again pleaded to move the case to "fair" justices that would uphold the US Constitution and oath of office or to remand the case to a federal court in the Petitioners' Motion for Rehearing of No. 23,815 in **EXHIBIT** 7 and also in the Motion for Rehearing in No. 23,965 (the parallel case) **EXHIBIT 8.** Justices Fitch, Alarid, Fry, and Pickard criminally have chosen to ignore the US Constitution and Civil Rights of the Petitioners and to attack the United States in subversion, insurrection, and treason to willfully violate all clearly established rights in America to protect Judge Fitch and the Chapels' violations of laws, to persecute and conduct hate crimes against the Petitioners and to defeat justice by infiltration of the judicial system to create illegal and unconstitutional case laws against the 13th and 14th Amendment, MANDATING their removal from office under the

US Constitution 14th Amendment Section 3 & 4. One Petitioner has filed a federal law suit against these egregious acts of judicial terrorism and brutality of the mis-use of a position of power as Judge to ruin the life of another in Federal Suit CIV-03-0804 **EXHIBIT 1.** In re Rochkind, 128 B.R. 520 Mich. 1991 "To use power of public office as judge to ruin another for personal gain plainly violates several provisions of the Code of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5." There is no judicial immunity for such acts of treason to "order" deprivations of 13th and 14th Amendment rights, these justices have violated all oaths, Code of Judicial Conduct and attacked the US Constitution, New Mexico Constitution, ignored the statutory laws of New Mexico, and attacked and ignored the case laws of state and federal on all issues. Not only is it the duty of the New Mexico Supreme Court to immediately remove Judge Fitch, Alarid, Fry, and Pickard under the US Constitution 14th Amendment Section 3 & 4, but the New Mexico Supreme Court has a duty under the NM Constitution to remove illegal justices pursuant to the New Mexico Constitution Article VI Section 3, wherein "**The Supreme Court.....shall have superintending control over all inferior courts..**" SCRA 1986, 12-504.A authorizes the NM Supreme Court to issue extraordinary writs, and the NM Supreme Court Judicial Standards and the NM Supreme Court use of disciplinary measures in the Bar avail this court to defeat the criminal intents of the Justices Fitch, Alarid, Fry, and Pickard to attempt to make case laws against the due process and equal protection of the 14th Amendment in an attack on the United States of America, and also to squelch the attempts to create slavery in New Mexico in violation of the 13th Amendment in a totalitarian dictatorship move for full control of the Petitioners.

The Supreme Court of New Mexico has simultaneously ruled that the

Doctrines of Res Judicata and the Law of the Case cannot outweigh statutory and Constitutional violations to produce clearly "erroneous decisions". (Advance Opinions, New Mexico Supreme Court Vol. 37, No. 44 October 29,1998).

BASES FOR GRANTING THE PETITION

The Petition should be granted for the following reasons:

A

The Court of Appeals decisions are to back Judge Fitch in a direct attack on the 13th & 14th Amendment, New Mexico Constitution Article 2 Section 4, 10, 18 and 23, and Article 16 to defeat justice.

B

The Opinion of June 18, 2003 and the denial of a rehearing contain violations of state laws and the federal laws of the US Code Title 42 Section 1981(a), Title 42 Section 1982, Title 42 Section 1983, Title 42 Section 1985, Title 42 Section 1986, Title 18 Section 241, Title 18 Section 1621, Title 18 Section 373, Title 18 Section 1512, Title 18 Section 1505, and Title 18 Section 1959 and violations of code of a justice of Title 28 Section 453, and the Petitioners and all New Mexico citizens have the right to the state laws being upheld in both written meaning and the spirit of the laws as enacted by the legislature under the rights of Equal Protection of the laws.

C

A significant question of law is defined in this case wherein Chapels are being singled out to be able to violate state laws, and to use those violations against another to control their property.

D

A significant question of law if defined in this case wherein the Petitioners are being singled out to persecute and deprive their use of their rights to the "equal protection" of the laws under clearly defined statutes, and unlawfully punished for legal ownership of property in

total violation of the United States Supreme Court ruling and against the 13th Amendment: Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

PRAYER FOR RELIEF

This Court should grant the Petition due to the direct attack on the United States and New Mexico Constitution, and to enforce the due process, Pro-Se representation, and statutory rights equal protection that has been denied by CV-94-10, and the enforcement that a **NON-PARTY** and his property are not subject to an unconstitutional wrongful injunction wherein his property can be illegally seized by a wrongful injunction preventing Constitutional Rights and Civil Rights. Clearly, the United States cannot tolerate persons infiltrating the judicial system to make case laws defeating and undermining the Unites States Constitution, or persons with no honor blaspheming God to accept office only to violate every aspect of the oath of office and Code of Judicial Conduct to allow criminals to control New Mexico with perjury, fraud to defeat justice, truth and the adversarial system. This court has a duty to e examine the substantial legal questions regarding the rights of New Mexico citizens to have the laws upheld as written, their rights to stock ponds without being subject to downstream claims of water rights within the statutory meaning embodied in the legislative intent of 72-5-32 and 72-9-3, and persons' rights under federal law Title 42 Section 1982 to own and control real and personal private property without interference from justices working outside of jurisdiction and judicial capacity in New Mexico, and to prevent the Chapels and unethical justices from promoting and aiding unlawful "slavery" to others or to a particular

judge. All laws of Constitution, statutes, and case laws prevent in America, what is being forced upon the Petitioners by Chapels and Judge Fitch, and the oath of judicial office, Code of Judicial Conduct and the ethics of the judicial system prevent Judge Fitch, Alarid, Fry, and Pickard from remaining in public office, as when any justice attacks the United States to deprive the rights of others, the US Constitution MANDATES their removal under the 14th Amendment Section 3. This court is dutifully bound to uphold the 13th and 14th Amendment, the New Mexico Constitution Article 2, Sections 4, 10, 18 and 23. This court is to dutifully uphold the statutes of NMSA 1997 72-5-32 and 72-9-3 to enforce the rights of the Petitioners to have stock ponds just as do every other New Mexico citizen, and to enforce the NM Constitution Article 16 and this Supreme Court's own case law of State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 to force the Chapels to destroy the 14.3 foot dam in statutory violation of 72-5-32 and 72-9-3 pursuant to 72-5-39, and to fine and jail the Chapels for violations of several state water statutes since 1984 under the provisions of 72-8-4, 72-8-6 and 72-12-11 pursuant to NM Constitution Article 16. No one in New Mexico can be above the laws to violate statutes and then to use those violations to enslave , oppress, and illegally punish another to steal their property from them by fraud, and no person can persecute a person for ownership of structures on their own private property that are in legal compliance with statutory laws, and then order the criminal attack on their property if those structures are not to their "liking". The questions of law here encompass and are directly intertwined with the equal protection of all New Mexico citizens to have the laws upheld, and to hold public justices

accountable when they violate oath , Code of Judicial Conduct and attack the Constitution and Civil Rights. The vile and reprehensible public corruption of this case is clear in the court records of CV-94-10 to attack citizens with the illegal assistance of diabolical justices that use a position of power to ruin the life of another, and that have no conscience or honor. It is clearly seen in the "order" of deprivations of 14th Amendment rights of due process of the Petitioners that Judge Fitch's Order of January 28, 2003 **EXHIBIT** 9 was specifically made to protect the Chapels and enable the Chapels to re-open CV-94-10 time and again in abuse of process and not to allow the Petitioners to defend themselves. However, the additional reason for Fitch to "order" the Petitioners not to have due process was to order protection for **himself** in federal court with the Petitioners s Plaintiffs and Judge Fitch as Defendant, wherein he specifically refers to Susan Nevitt v. Judge Fitch Federal Case CIV-02-1580. "**Indeed, another suit not listed in the motion was filed recently by Susan Nevitt in the federal district court**." Page 1-2. At that time there was also David Derringer v. Judge Fitch et al CIV-02-0974.

Petitioner respectfully requests the Court to review the Court of Appeals Opinion. Because of the Court's violations of 14th Amendment rights the appeal of CV-94-10 lacked due process. State ex rel DuBois v. Ryan, 85 N.M. 575, 577, 514 P.2d 851 (1973) "..remedy by appeal [is] substantially inadequate."

Attached as Exhibits 1-9 are pleadings and the federal suit against these errant justices that show all violations of Constitutions and the total disrespect for any law in the state of New Mexico by these justices and the Plaintiff-Appellees.

Respectfully submitted by /s/
David Derringer, Susan Nevitt, Norma Nevitt Pro-Se

P.O. Box 157, Quemado, New Mexico 87829

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Sup. Ct. No. 28,217
Ct. Ap. No. 23,965
Catron County Case CV-94-10

MICK C. CHAPEL AND JENNIFER CHAPEL

Plaintiffs-Respondents,

vs.

SUSAN NEVITT,
NORMA NEVITT and
DAVID DERRINGER

Defendants-Petitioners,

PETITION FOR WRIT OF CERTIORARI TO THE NEW MEXICO COURT OF APPEALS

Submitted by:

David Derringer, Susan
Nevitt, and Norma Nevitt Pro-Se
P.O. Box 157
Quemado, New Mexico 87829

August 7, 2003

Pursuant to SCRA 12-502(A) 2002, the Plaintiff-Petitioners

David Derringer, Susan Nevitt, and Norma Nevitt, representing themselves Pro-Se, respectfully asks this Court to grant this Petition for Writ of Certiorari in Mick C. Chapel and Jennifer Chapel, v. Susan M. Nevitt, Norma J. Nevitt, and David Derringer, Court of Appeals No. 23,965 (and to also reference the parallel case No. 23,815) showing Constitutional and Civil Rights deprivations and the direct attack on the United States of America by persecution of unlawful attorney fees to prevent due process. This Petition is timely filed on August 7, 2003. Rule 12-502(B) NMRA 2002.

DATE OF ENTRY OF DECISIONS

The New Mexico Court of Appeals decision was filed on June 27, 2003. The Motion for Rehearing Denial was filed on July 30, 2003 without recusal of justices Alarid,Fry and Pickard despite federal suit against them for violations of oath of office and deprivations of Constitutional rights [CIV-03-0804] wherein the Motion for Rehearing denial was used for unlawful retribution without the due process of the 14th Amendment to be heard by separate fair and impartial justices of the New Mexico Court of Appeals. Copies are attached with this Petition.

QUESTIONS PRESENTED FOR REVIEW

E. Whether the Court erred in subjecting the Petitioners to additional illegal attorney fee financial attacks, after the already willful oath violations of Alarid, Fry and Pickard by deprivations and violations under the 13th Amendment wherein the Petitioners cannot be enslaved, be subject to selective cruel and unusual punishment, or involuntary servitude be created against them and their legal, and statutorily compliant stock ponds legally available to them under the "equal protection" of NMSA 1997, 72-5-32 and

72-9-3, on their real and personal private property under Title 42 U.S.C. Section 1982, based on Chapels violations of state laws with an illegal dam of 14.3 feet without permit and without the mandated safety engineered design and prior approval before construction of any dam over 10 feet pursuant to NMSA 1997, 72-5-32, 72-9-3, 72-5-39 and the NM Constitution Article 16, wherein no one can violate the "**exclusive**" statutory mandates, pursuant to the NM Supreme Court No. 6524, without being fined and jailed under NMSA 1978, 72-8-4, 72-8-6 and 72-12-11; and can the Petitioners be enslaved before the NM Court of Appeal justices Alarid, Fry, and Pickard when these three justices have already been sued in federal court CIV-03-0804 for violations of oath of office and then have justices Alarid, Fry, and Pickard seek their wrath in vengeance with ruling for illegal and unconstitutional attorney fees against the Petitioners without jurisdiction or judicial capacity, wherein the justices would have been mandated under Rule 1-088.1(D) to give No. 23,965 to other Court of Appeals justices wherein they had already deprived and denied due process and equal protection and wherein the Petitioners had already requested the matter be either moved to justices that would honor their oath of office and the laws or remand this matter to a federal court pursuant to Virginia v. Rives, 100 US 313, 318 (1880); Monroe v. Pape, 365 US 167 (1961) ? **[SEE: attached federal suit against justices Alarid, Fry, and Pickard CIV-03-0804 (Exhibit 1)]**

F. Whether the Court erred to "order" attorney fees as cruel and unusual additional punishment, after the prior deprivation of

the US Constitution 14th Amendment for "equal protection" and deprivation of "equal protection" of the laws under the NM Constitution Article 2 Section 18 to allow the Chapels to continue to violate NMSA 1997, 72-5-32, 72-9-3, 72-5-39, 72-5-1 and to violate the NM Constitution Article 16 with a 14.3 foot dam without permit or the mandated (under 72-5-32) safety engineered design and approval of the state engineer prior to the construction of any dam over 10 feet, wherein the Court violated and attacked the statutory meaning and spirit of federal law Title 42 U.S.C. Section 1981(a) "equal protection" to render it moot, and to violate oath of state office and the Code of Judicial Conduct Canon 3 (B)(2), and then violate to apply and enforce the Constitutions and the case laws already established by the higher NM Supreme Court and the Federal courts of State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be."; and Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43 U.S.C.A. 372 et seq.; and could the Court of Appeals then single out the Petitioners to attack them financially with illegal attorney fees for exercising their rights of due process to fight this criminal fraud and public corruption ? [SEE: complaint to the United

States House Judiciary Committee EXHIBIT 2]

G. Whether the Court erred to persecute all Petitioners in hate crimes, after already allowing the prevention and deprivation of Petitioner David Derringer's 14th Amendment rights of due process, also protected under the NM Constitution Article 2 Section 18, in the original trial [CV-94-10 Judgement and Injunction of May 17, 1996] of which all other decisions are based and unconstitutionally attack and attack his real property and legal, historical, and statutorily compliant structures located upon this property protected by Title 42 U.S.C. Section 1982 of which the Court has no legal jurisdiction or judicial capacity; and to then enslave and attack further David Derringer's real property, when he had been a **NON-PARTY** to the Judgement and Injunction of May 17, 1996 by unlawful deprivation of due process or any means for collateral attack on this "jurisdictionally defective" judgement, and ignore the Code of Judicial Conduct Canon 3 (B)(2) to not abide by the NM Supreme Court case law Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action." that MANDATES that David Derringer is not bound, nor is his real and personal property not bound to the Judgement and Injunction of CV-94-10 of May 17, 1996 as a **NON-PARTY** (upon which all other decisions of CV-94-10 are based) and then additionally conduct hate crimes and persecution of attorney fees to additionally harm the Petitioners with mis-use of power in NM public and judicial

corruption when the Petitioners have a right to federal protection from Alarid, Fry, and Pickard under the Whistleblowing Act of 1989 ? [SEE: Complaint of NM judicial corruption and request for federal protection in **EXHIBIT 2** to the United States House Judiciary Committee]

H. Whether the court erred in producing additional attorney fees to persecute the Petitioners further, still contending that res judicata and the law of the case CV-94-10 could over-ride and have precedence over: the US Constitution 13th and 14th Amendments, US Code Title 42 Section 1981(a), Title 42 Section 1982 Private Property Act rights, Title 42 Section 1983 Civil Rights protection, Title 42 Section 1985 Civil Rights derivations, Title 42 Section 1986 mandates to protect Constitutional and Civil Rights, and NM Constitutional mandates of due process, equal protection, slavery, the "exclusiveness" of compliance to state water laws in Article 16, statutory water laws demanding compliance under 72-5-39, and ignoring the mandated limitations of 72-5-32, 72-9-3, 72-5-1, 72-5-24, and 72-5-39 and that the CV-94-10 "res judicata" of Chapels' previous proven perjury and fraud violations of criminal laws NMSA 30-25-1, 30-28-2, AND 30-16-6 directly to the courts could deprive the Constitutional rights and Civil Rights of the Petitioners as United States citizens in direct violations of oaths of office of Court of Appeals justices Alarid, Fry, and Pickard ?

I. Whether the Court erred in mandating illegal attorney fees as vengeance, without recusal, using additional financial punishment by justices Fitch, Alarid, Fry, and Pickard,

wherein they continue to violate oath to mis-use their power as justices after federal suit CIV-03-0804, without either jurisdiction or judicial capacity to attack the United States Constitution to deprive: due process, equal protection, Constitutional and Civil Rights, fairness and equity in a trial, "order" criminal acts of trespass and destruction of legal, statutory compliant, private structures on private property outside of their jurisdiction and judicial capacity, "order" the Petitioners to be persecuted and damaged and punished for ownership of legal, statutorily compliant and "private" stock ponds, and to "order" the private, statutorily compliant and legal only roads of necessity and legal stock ponds on the private, fenced, posted and personal and real property (under Title 42 U.S.C. Section 1982) to be criminally attacked; and not be immediately removed from office under the Mandates of the US Constitution 14th Amendment Sections 3 and 4 and not be prosecuted for "treason" under the US Constitution Article III Section 3 for attempting to set case laws in insurrection and attack on the 13th and 14th Amendment rights and US Code equal protection and Civil Rights of any American in the United States, and not be criminally prosecuted under NMSA 1962, 30-28-1, 30-28-2, 30-14-1, 30-15-1, and under Title 18 Section 241, Title 42 Section 1985, Title 18 Section 373, and Title 18 Section 1959, and mis-use their power to ruin the life of another ?

J. Whether the Court erred in contending that justices Alarid, Fry, and Pickard could continue to preside over No. 23,965 to not grant a fair and impartial judiciary to continue to persecute the Petitioners by illegal attorney fees to support the

unconstitutional decisions of Judge Fitch, when Alarid, Fry, and Pickard continued to violate their state oath of office, Federal US Code Title 28 Section 453, and violate the Code of Judicial Conduct Canon 1-3, 3 (B)(2)(5)(7) to attack the US Constitution and deprive the Petitioners the equal protection of the Constitutions, statutory laws of federal and the state of New Mexico, and to rule against the case laws of federal and New Mexico that already mandated that Chapels can not take the statutory allowable and compliant stock ponds from the Petitioners or inhibit use or ownership thereof, cannot use any NM public waters with a 14.3 foot dam without permit, cannot deprive David Derringer due process, cannot deprive the Petitioners a fair and impartial hearings for due process, cannot single out the Petitioners for persecution of financial damage of attorney fees to reward the Chapels' violations of laws, and cannot use attorney fees to dissuade additional due process available under the 14th Amendment, Title 42 Section 1981(a), and the NM Constitution Article 2 Section 4 and Section 18, and cannot deny the Petitioners the statutory rights to raise their goats under NMSA 77-8A-1 by the deprivation of the legal use of those stock ponds and then punish the Petitioners for litigating to uphold these rights ?

K. Whether the Courts erred in subjecting the Petitioners to illegal attorney fees to condone that the Chapels could require the removal of the Petitioner's legal stock ponds when stock ponds in New Mexico are not only guaranteed to all citizens under NMSA 72-5-32 and 72-9-3, but wherein there is no statute or case laws that make stock ponds subject to downstream control of any other beneficial use of water

including irrigation rights, such an erroneous decision rendering all New Mexico stock ponds extinct due to every stock pond in New Mexico having some other downstream water use, including the water owed to the state of Texas from watersheds in New Mexico all having stock ponds upstream ?

L. Since the Petitioners' stock ponds and roads over same are legal, statutory compliant, and within the size limitations allowable under state laws, and since the Petitioner's property is private and without any other proprietary interest, contractual interest, or monetary interest and allowable for private property ownership under Title 42 Section 1982, and since the "equal protection" of the laws guarantees the stock ponds to the Petitioners pursuant to the wording intent of the legislature of 72-5-32 and 72-9-3, did the court err to work outside of jurisdiction and judicial capacity to infringe, intervene, and persecute the Petitioners wherein the Petitioners could not be punished, fined or assessed damages for personal, legal ownership of private structures outside of the jurisdiction of the Chapels and the courts, and wherein the courts cannot "order" criminal action of trespass and destruction of private property without prosecution under the criminal code of New Mexico and federal laws and then additionally persecute the Petitioners with unlawful and unavailable attorney fees to protect the violations of Judge Fitch and the Chapels' illegal dam ?

M. Is it not a conspiracy against Civil Rights under Title 42 Section 1985, Title 18 Section 241, and a direct violation of federal law Title 42 Section 1986, for the justices Fitch,

Alarid, Fry, and Pickard to punish the Petitioners with attorney fees for their illegal act cover-up of singling out the Chapels to be allowed to take public water in violation of the statutes with a 14.3 foot dam without permit, and to single out the Chapels not to be fined or jailed while in violation of the "**exclusive**" state laws, and to the allow the Chapels to use violations of state laws and the NM Constitution Article 16, to single out the Petitioners to deny, prohibit, and obstruct the exercise of the statutes for the Petitioners to own, use and enjoy their two legal, statutory compliant and private stock ponds, so that Chapels can enslave and control the Petitioner's real property and ruin the livestock business of the Petitioners ?

N. Is it not the duty, responsibility, legal requirement, oath of office, Code of Judicial Conduct responsibility and federal law mandate of Judge Fitch, Alarid, Fry, and Pickard to protect the US and New Mexico Constitution, obey all case laws, and apply the statutory laws of New Mexico as written to ensure due process and equal protection of all citizens in a fair an equitable court of law within New Mexico or be liable for Civil Rights suit under "action for neglect to prevent" and not to cause additional Civil Rights damage to the Petitioners by awarding the Chapels attorney fees in reward of their crime ?

O. Since the Chapels are proven to have lied and conducted criminal fraud to a court of law by admitting to destruction of the Frank Armijo dam of Declaration #02311 in 1984 and admitting on June 14, 1994 and again in Deposition of October 12, 1994 that they had built a new dam well in

excess of 10 feet and impounding twice the statutory limits of 72-5-32 and 72-9-3 without permit or engineered design before construction, and since it was proven by the OSE on May 22, 1995 that the Chapel dam was 14 feet in height, proven by the OSE on April 4, 1996 and again on June 19, 1996 that the Frank Armijo Declaration #02311 was INVALID and could not attain a pre-1907 water right, and then the Chapels have lied to a jury on April 22, 23, and 24th, 1996, and ever since that their still illegal dam was not over 10 feet and impounded less than 10 acre feet of water, was not the Court in error to reward the Chapels for this criminal behavior by attorney fees to dissuade the Petitioners from defending their Constitutional Rights that is being "whistleblowing" litigation on the NM court judicial and public corruption ?

FACTS MATERIAL TO THE QUESTIONS PRESENTED

Mick Chapel (as testified to in the Seventh Judicial District Court in CV-94-10 on June 14th, 1994 pages 78,79,94,95,98,105 and again in his Deposition of October 12th, 1994 pages 52,53,59,114,115) tore up the original Frank Armijo dam/pond in 1984, digging it deeper to 16-18 feet, pushing the dirt over the top to increase the dam to 25 feet and building it longer to encompass the 1/4 mile ditch (ditch #1) to the South to meet and encompass Harris Creek and to include Willow Spring drainage. This changed the once-existing "off-stream" small dam/pond of Frank Armijo originally 1/4 mile away from Harris Creek into a large "on-stream" dam/lake of Chapels in statutory violation of 72-5-32. Chapels admit to doing all of these illegal acts and doing them without any concern or permit from the Office of the New Mexico State Engineer and in total

violation of state water laws which are "exclusive" and public water use is prohibited with any violation of any water statute. Chapels also admit both to diverting Harris Creek and creating a diversion from Willow Spring to run directly into their new pond all without permit under 72-5-1 or 72-5-24. Thus, Mick Chapel admitted to all of the violations of laws in court testimony of June 14, 1994 and in Deposition of October 12, 1994 well prior to CV-94-10 trial of April, 1996 that resulted in the fraudulent Judgement and Injunction of May 17, 1996 when the Chapels lied to the courts; and of which David Derringer, legal deeded necessary and indispensable property owner, was denied 14th Amendment rights of due process, and his property illegal seized with the jurisdictionally defective Judgement and Injunction of May 17, 1996 wherein he was a **NON-PARTY**. The OSE proved the Chapel's dam at 14 feet on **May 22, 1995**, and proved Chapels had no pre-1907 water rights on April 4, 1996 and again on June 19, 1996. The Chapel dam has been proven to be 14.3 feet by Hydroscience Inc. on February 12, 1999, proven at 14.3 feet by GPS survey of Quail Springs Survey Co. on June 21, 2001, and proven at 14.3 feet by AK Geoconsult Inc. by PHD Engineer/Hydrologist Alan Kunh on June 29, 2001 and proven that the Chapel dam had criminally trespassed water onto the Petitioners' upstream property in June 2001 due to the dam in violation of state laws being higher than the upstream property. The report of PhD Engineer/Hydrologist Alan Kuhn stated "*The land survey show that the average crest elevation of the Chapel Dam is 7661.0 and the elevation of the creek bed off the dam toe is 7646.7, giving a difference of 14.3 feet. Dams that are 10.0 feet or more in height must be designed by a licensed Professional Engineer and permitted by the New Mexico State Engineer.*" Chapels' criminal perjury and

fraud is well documented in the state court records, and continues in federal court. The Chapel dam has violated state laws every day since 1984 of which **"each day of continued violation shall constitute a separate offense"**, and Chapels are liable for damages against them under NMSA 1978, 72-8-4, 72-8-6 and 72-12-11. Since **David Derringer was a NON-PARTY to CV-94-10 for the ever-since illegally used Judgement and Injunction of May 17, 1996,** neither David Derringer nor his property is subject to that illegal decision that deprived the statutory and Constitutional "equal protection" rights of the Nevitt/Derringers to their own use and ownership of their legal, statutorily compliant and "private" stock ponds guaranteed to them by statutory mandates of NMSA 72-5-32 and 72-9-3. Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action."

The Petitioners purchased their property with two historical stock ponds that are shown on the USGS Map Gallo Mountains East Quadrangle, each of which is well under a 10 foot dam impounding less than 3 acre feet of water, proven by the survey of GPS of Quail Springs Survey Company on June 21, 2001, and each stock pond is located on private property and used for legal beneficial use of livestock watering, hence legally available to the Petitioners under statutory laws 72-5-32 and 72-9-3, and under "equal protection" under the US Constitution 14th Amendment, Title 42 Section 1981(a), and the NM Constitution Article 2 Section 18.The Supreme Court of New Mexico has previously had before it similar cases of violations of statutory laws and perjury regarding attempts to claim water illegally as the Chapels are doing, and the Supreme Court of New

Mexico has always upheld the Constitution of New Mexico and all statutory laws.

NATURE OF THE CASE/ARGUMENT

This case involves a persecution of the Petitioners by illegal attorney fees, not unlike the illegal persecution of the Petitioners for lawful structures on their private property by hate crimes conducted by justices working outside of jurisdiction and judicial capacity, performing Constitutional and Civil Rights deprivations that show a disrespect for the United States, human rights and "life" itself. The record shows the criminal proven perjury and fraud of the Chapels lying to a court jury in April, 1996 to gain an illegal, jurisdictionally defective and unconstitutional Judgement and Injunction of May 17, 1996 with the deprivation of the 14th Amendment rights of David Derringer, and then unconstitutionally gaining a "wrongful injunction" against the Petitioners real property preventing the clearly established Constitutional rights of "**EQUAL PROTECTION**" of legal stock pond use and ownership within 72-5-32 and 72-9-3 by use of the Chapels' illegal dam of 14.3 feet in height in statutory violation enslaving and creating control of the private property of the Petitioners, wherein under federal law Title 42 Section 1982 neither the Chapels nor Judge Fitch have any jurisdiction; all with David Derringer and his 14th Amendment rights to protect his real property as a **NON-PARTY**. Because the Chapels sought to control and gain possession of the Petitioners' property, the Petitioners were unlawfully punished for legal ownership of the two stock ponds in violation of "equal protection", and subjected to illegal damages contending that the Chapels claim to downstream irrigation could prevent their use. The Chapels and the Courts ignored the Chapels illegal use of public waters when in violation of laws, wherein the

statutes for water use are "**exclusive**" and Judge Fitch continues to allow the Chapels to re-open the jurisdictionally defective CV-94-10 in abuse of process and malicious prosecution for persecuting the Petitioners for legal ownership of real property in the United States of America. As the Petitioners still defend their property legally in a court of law pursuant to the 14th Amendment and at the same time uncover the public corruption of the New Mexico courts and "racketeering" going on in Catron County, the Chapels, Joseph Manges and Judge Fitch have resorted to criminal acts of judicial and domestic terrorism and Orders to deny and deprive due process and equal protection in a court of law as undeniably are the Constitutional and Civil Rights of the Petitioners, and justices Alarid, Fry, and Pickard conspire in this deprivation of Civil and Constitutional Rights in violations of Title 42 Section 1985, Title 42 Section 1982, Title 18 Section 241 in violation of Title 42 Section 1986 to persecute the Petitioners more with illegal attorney fees for Chapels in a "reward" to Chapels for their violations of state laws and "enslavement" of the Petitioners in violation of the 13th and 14th Amendments. Chapels are singled out in the United States to be above the laws, and to use those violations of laws against the rights of the Petitioners, and the Petitioners are singled out to persecute, harass, endure abuse of the courts, and be subject to hate crimes, retribution from Justices Alarid, Fry, and Pickard being sued in federal court CIV-03-0804, and to be punished for ownership of legal stock ponds despite legal ownership available by existing state and federal law Title 42 Section 1982. The Petitioners are forced continuously before Judge Fitch that will not recuse so that the Petitioners will be forced to endure the constant re-opening of the jurisdictionally defective CV-94-10 until the Chapel/Judge Fitch

conspiracy steals their real property by criminal damages assessed for ownership of the legal stock ponds, and until the Petitioners are murdered and/or forced from New Mexico. There is no fair, impartial, or court of equity that the Petitioners can escape to ensure justice is served.

The NM Court of Appeals was made aware of the Constitutional and Civil Rights attack against the Petitioners and the United States in the Docketing Statement **EXHIBIT 3**. The Petitioners pleaded with the NM Court of Appeals to "**read the record**" by moving the Summary Calender to a General Calender and were denied **EXHIBIT 4**. The Petitioners' response brief to the first proposed Summary Affirmance **EXHIBIT 5** was "whistleblowing" on the public corruption that had gone on in this matter to include the criminal Chapel fraud, and the falsification of public court records and the obstruction of appeals. Since there were clearly defined deprivations of Constitutional and Civil Rights occurring in CV-94-10, the Petitioners pleaded with the justices of Alarid, Fry and Pickard not to rule until the federal courts had ruled upon the violations of 13th and 14th Amendment rights, with their Motion for Stay..", and the Petitioners were denied, with the Court of Appeals justices themselves engaging in the deprivation of rights. Hence, the justices Alarid, Fry, and Pickard have had every opportunity to obey their oath and protect the Constitutional and Civil Rights of the Petitioners and to abide by the already established case laws of the New Mexico Supreme Court that prohibited their decisions of No. 23,815, which in turn prohibited their illegal attorney fees of No. 23, 965. **EXHIBIT 6**. The Appellant' Memorandum Response in Opposition to the Second Proposed Summary Affirmance clearly defined the fraud, public corruption, and Constitutional mandates that

prohibited the Court of Appeals from attaining a decision for the Chapels and the unconstitutional decisions of Judge Fitch, **(EXHIBIT 7)**, yet again the justices of Alarid, Fry and Pickard defied their oath to protect Constitutions, case laws, and New Mexico statutes, and violated all laws to again rule to continue to persecute the Petitioners with illegal attorney fees, based on their unconstitutional and unlawful decisions of No. 23, 815. The Petitioners again asked for compliance with all Constitutional laws, case laws of the NM Supreme Court and to protect the Petitioners as mandated under Title 42 Section 1986 by compliance with oath of office, Code of Judicial Conduct and simply ethics of abiding by the laws of New Mexico in the Petitioners' Motion for Rehearing. **(EXHIBIT 8)**. The Petitioner David Derringer then filed federal suit CIV-03-0804 against justices Alarid, Fry, and Pickard for their willful violations of oath, Code of Judicial Conduct and attack on the United States of America in No. 23,815, and these justices were mandated under Rule 1-088.1(D) to recuse to afford an impartial and fair evaluation of the Motion for Rehearing to afford due process for the Appellants under the 14th Amendment. State v. Marden, 673 A.2d 1304 Me. 1996 "No judge should preside in case in which he is not wholly free, disinterested, impartial, and independent."; Petition of Wittrock, 649 A.2d 1053 (Del.) Supra. 1994 "Every litigant is entitled to be heard by a disinterested judge." Just as in violations of their oath of office, Alarid, Fry, and Pickard defied equal protection and proper due process and continued to force the Appellants to be under their unethical control. State ex rel Anaya v. Scarborough, 75 N.M. 702, 410 P.2d 732 (1966) "Requiring petitioner to stand trial before biased or prejudiced judge does not conform to adequate remedy." Hence, the justices of Alarid, Fry, and Pickard mis-used

their power and abused all laws to continue to violate oath and rule in Constitutional deprivation to attack the Petitioners financially by illegal attorney fees in revenge, retribution and hate crimes for taking them to task for their illegal acts to violate the Constitutional and Civil Rights of the Appellants, and their illegal and underhanded singling out of the Chapels to violate state laws that was prohibited by statute, NM Constitution Article 16 and the NM Supreme court case law of: State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be."of which the NM Court of Appeals had to obey under the Code of Judicial Conduct Canon 3 (B)(2) and their oath of NM judicial office.

Justices Fitch, Alarid, Fry, and Pickard criminally have chosen to ignore the US Constitution and Civil Rights of the Petitioners and to attack the United States in subversion, insurrection, and treason to willfully violate all clearly established rights in America to protect Judge Fitch and the Chapels' violations of laws, to persecute and conduct hate crimes against the Petitioners and to defeat justice by infiltration of the judicial system to create illegal and unconstitutional case laws against the 13th and 14th Amendment, MANDATING their removal from office under the US Constitution 14th Amendment Section 3 & 4, and have mis-used their power, after federal suit for revenge to persecute the Appellants by illegal attorney fees, and to thus "award" the Chapels money for the Chapels violations of state water laws and Constitutional deprivations, and have used the attorney fees to further "enslave" the Petitioners in violation of the 13th and 14th Amendments and to continue to ruin the

lives of the Petitioners. In re Rochkind, 128 B.R. 520 Mich. 1991 "To use power of public office as judge to ruin another for personal gain plainly violates several provisions of the Code of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5." There is no judicial immunity for such acts of treason to "order" deprivations of 13th and 14th Amendment rights, these justices have violated all oaths, Code of Judicial Conduct and attacked the US Constitution, New Mexico Constitution, ignored the statutory laws of New Mexico, and attacked and ignored the case laws of state and federal on all issues and have then mis-used their power in vengeance to attack the Petitioners with unlawful attorney fees to reward the Chapels for their violations of state water laws with their illegal 14.3 foot dam in constant statutory violation since 1984 without permit and without the mandated engineered design before construction stealing continuously the public waters of New Mexico. Not only is it the duty of the New Mexico Supreme Court to immediately remove Judge Fitch, Alarid, Fry, and Pickard under the US Constitution 14th Amendment Section 3 & 4, but the New Mexico Supreme Court has a duty under the NM Constitution to remove illegal justices pursuant to the New Mexico Constitution Article VI Section 3, wherein "**The Supreme Court.....shall have superintending control over all inferior courts..**" SCRA 1986, 12-504.A authorizes the NM Supreme Court to issue extraordinary writs, and the NM Supreme Court Judicial Standards and the NM Supreme Court use of disciplinary measures in the Bar pursuant to the Code of Judicial Conduct Canon 3 (D)(1) avail this court to defeat the criminal intents of the Justices Fitch, Alarid, Fry, and Pickard to attempt to make case laws against the due process and equal protection of the 14th Amendment in an attack on the United States of America, and to mis-

use their power for revenge and retribution by illegal attorney fees against law abiding citizens of the Petitioners.

The Supreme Court of New Mexico has simultaneously ruled that the Doctrines of Res Judicata and the Law of the Case cannot outweigh statutory and Constitutional violations to produce clearly "erroneous decisions". (Advance Opinions, New Mexico Supreme Court Vol. 37, No. 44 October 29,1998) and thus with Chapels' statutorily 14.3 foot dam used illegally to "enslave" the Petitioners in a total violation of equal protection, the attorney fees as reward for Chapels' criminal acts are unavailable to the Court of Appeals as remedy against the legal and private stock ponds on the Nevitt/Derringer property, and can only be seen as vengeance to award such attorney fees as a hate crime against David Derringer Plaintiff in **David Derringer v. Joseph Alarid, Cynthia Fry, and Lynn Pickard et al Federal Case CIV-03-0804. .**

BASES FOR GRANTING THE PETITION

The Petition should be granted for the following reasons:

A. The Court of Appeals decisions are to back Judge Fitch in a direct attack on the 13th & 14th Amendment, New Mexico Constitution Article 2 Section 4, 10, 18 and 23, and Article 16 to defeat justice.

B. The Opinion of June 27, 2003 and the denial of a rehearing on July 30, 2003 contain violations of state laws and the federal laws of the US Code Title 42 Section 1981(a), Title 42 Section 1982, Title 42 Section 1983, Title 42 Section 1985, Title 42 Section 1986, Title 18 Section 241, Title 18 Section 1621, Title 18 Section 373, Title 18 Section 1512, Title 18 Section 1505, and Title 18 Section 1959 and violations of code of a justice of Title 28 Section 453, and the Petitioners

and all New Mexico citizens have the right to the state laws being upheld in both written meaning and the spirit of the laws as enacted by the legislature under the rights of Equal Protection of the laws and attorney fees cannot be awarded to the criminal deviants who violate these laws as a monetary "reward".

C. A significant question of law is defined in this case wherein Chapels are being singled out to be able to violate state laws, and to use those violations against another to control their property and then receive attorney fees against the Defendants when the Defendants litigate to protect their Constitutional and Civil Rights.

D. A significant question of law if defined in this case wherein the Petitioners are being singled out to persecute and deprive their use of their rights to the "equal protection" of the laws under clearly defined statutes, and unlawfully punished for legal ownership of property in total violation of the United States Supreme Court ruling and against the 13th Amendment, and then receive cruel and unusual punishment for due process by unlawful attorney fees meant to defeat their rights of opportunity to be heard under law: Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

PRAYER FOR RELIEF

This Court should grant the Petition due to the direct attack on the United States and New Mexico Constitution, and to enforce the due process, Pro-Se representation, and statutory rights equal

protection that has been denied by CV-94-10, and the enforcement that a **NON-PARTY** and his property are not subject to an unconstitutional wrongful injunction wherein his property can be illegally seized by a wrongful injunction preventing Constitutional Rights and Civil Rights, and wherein the Petitioners cannot be "punished" for exercising their 14th Amendment rights of due process to litigate against this fraud and public corruption and have the Chapels "rewarded" for their abuse of process, malicious prosecution, and clearly be "rewarded" for violations of state water laws stealing the public waters from the citizens of New Mexico. This court has a duty to e examine the substantial legal questions regarding the rights of New Mexico citizens to "equal protection" of the laws, and not reward criminal deviants for violations thereof. This court is dutifully bound to uphold the 13th and 14th Amendment, the New Mexico Constitution Article 2, Sections 4, 10, 18 and 23 Article 16, and all NM water case laws.

Respectfully submitted by /s/David Derringer, Susan Nevitt, Norma Nevitt Pro-Se P.O. Box 157, Quemado, New Mexico 87829

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
CASE No. 28,173
District Court Case CV-94-10
Court of Appeals No. 23,815

MICK C. CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Respondents,

V

SUSAN NEVITT, NORMA NEVITT and
DAVID DERRINGER,

Defendants-Petitioners,

DEFENDANTS MOTION FOR RECONSIDERATION (RE-TRIAL) PURSUANT TO RULES 1-059 AND RULE 1-060

COMES NOW the Defendants Susan Nevitt, Norma Nevitt and David Derringer with attached affidavit (EXHIBIT "A") for a motion for a new trial of the Constitutional deprivations of No. 28,173, based in Rule 1-059(c) and Rule 1-060(b)(1)(3)(4), and timely filed for just cause of facts and controlling US and NM Constitution and case laws not acted upon properly by the court, and the controlling 14th Amendment Section 3 that prohibits the affirmance of any orders against the due process 14th Amendment rights of the Defendants, or persecution of, or deprivations of legal stock ponds protected by the "**EQUAL PROTECTION**" of the 14th Amendment, Title 42 Section 1981(a) and the NM Constitution Article 2 Section 18 and Nevitt/Derringer legal stock ponds that are outside of the jurisdiction of any NM court by the Private Property Act of Title 42 U.S.C. Section 1982. Romero v. McIntosh, 19 N.M. 612, 145 P.254 (1914) "A motion for new trial may be made in a non-jury case." **SEE**: Servant of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) A Rule 59 motion "is appropriate where the court has misapprehended the facts, a party's position, or the controlling law."and "**the need to correct clear error or prevent manifest injustice**" The Motion for Reconsideration is timely brought in good faith under Rule 1-059(c), with the facts and controlling Constitutions and case laws and 14th Amendment Section 3 substantially on the side of the Defendants, and the NM Supreme

Court is violating all oaths of office [31] and violating all provisions of the US Constitution, NM Constitution Article 2 Section 18 and Article 16, and New Mexico Case laws, which entitles the Defendants to a direct appeal of this subversion of the US Constitution by the NM Supreme Court, if not corrected, to the United States Supreme Court under Rules of the Supreme Court of the United States Rule 10(b)(c).

I ISSUE OF NO. 28,173 BIAS, PREFERENTIAL TREATMENT OF CHAPELS AGAINST ALL LAWS, AND DEPRIVATIONS OF "EQUAL PROTECTION" OF THE DEFENDANTS AND ALL UNITED STATES CITIZENS

The NM Supreme Court, by No. 28,173 has "singled-out" the Chapels of the **jurisdictionally defective, illegal, and unconstitutional** state case of CV-94-10, to be able to unlawfully mis-use a surveyed 14.3 foot dam without permit and without any engineered design before its proven and admitted construction by Mick Chapel in 1984, to illegally irrigate 26 acres of un-defined lands, with public NM State surface waters from 1984 until the present in violation of NMSA 1997, 72-5-32, 72-9-3, 72-5-1, 72-5-39 and in violation of the NM Constitution Article 16. This not only violates the NM Constitution Article 16, but violates the United States Constitution 14th Amendment, Title 42 U.S.C. Section 1981(a) and the NM Constitution Article 2 Section 18 provisions of "equal

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I, Judge [NM Supreme Court justices, and Judge Fitch, Alarid, Fry, and Pickard], do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico, and that I will faithfully and impartially discharge the duties of the office of Judge on which I am about to enter, to the best of my ability SO HELP ME GOD."

protection" of the laws. Additionally, this illegal Chapel use of a proven 14.3 foot dam (**Exhibits 1,2,3,4,5, 6, 7 & 8**) without permit violates the "**exclusiveness**" of the statutes, NM Constitution Article , and such a violation of dam height "**voids**" any claim (legal or non-legal) to any water right under CV-94-10, Pre-1907 provisions, or any other source; such illegal use of public waters is prohibited by NMSA 1978, 72-5-39 and the NM Constitution Article 16. City of Albuquerque v. Reynolds, 71 N.M. 428, 379 P.2d 73 (1962) "Stream and underground water rights are identical - Although appropriators' rights regarding streams and underground waters may be secured under different administrative procedures, substantive rights obtained are identical." ; State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, V. Donald E. Fanning 68 N.M. 313, 361 P.2d 721 (1961) "Unauthorized change.. without following the statutory procedure..resulted in legal forfeiture of his water right". ; State of New Mexico ex rel. S.E. Reynolds, State Engineer v. Mitchell, 66 N.M. 212, 345 P.2d 744 (1959) "Unauthorized change..without following the statutory procedure...resulted in legal forfeiture of his water right". Chapels' type of violation of state water laws to steal public surface waters by use of an illegal 14.3 foot dam, has already been decided as "res judicata" and the "law of the case" by controlling state and federal case laws of:

1. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951): "The statutory manner of securing rights to use water for irrigation is exclusive, and no right to use of water is obtained by use in violation of the statutes."
2. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951) Illegal use of public waters does not create any right

to continue use since statutory manner for securing right to use public waters is exclusive.

3. State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "No right to the use of water..was obtained by its use by defendants in violation of law, nor can it be."

4. Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981 "Nothing in statutes nor is legislative history indicates that Congress intended to authorize uses of water otherwise prohibited under state law. 43 U.S.C. (1970 Ed) 615, 620C Reclamation Act of 1902, 8et seq. 43 U.S.C.A. 372 et seq.

The New Mexico Supreme Court is bound to these former case laws under their oath of office "I, (Supreme Court justices), do solemnly swear that I will support..the laws of the State of New Mexico..SO HELP ME GOD.", and are also bound under the Code of Judicial Conduct Canon 3 (B)(2) to "**SHALL** be faithful to the law" [law: as defined by Canon "denotes...constitutional provisions and decisional law." . The NM Supreme Court is bound to the US Constitution 14th Amendment, Title 42 Section 1981(a), and the NM Constitution Article 2 Section 8 for "equal protection" of all laws to all citizens of the United States, and cannot "single-out" the Chapels as allowed to own, use and use to deprive other citizens, a 14.3 foot dam in statutory violation of NMSA 1978, 72-5-32, 72-9-3, 72-5-1, 72-5-39 and the NM Constitution Article 16 in conspiracy against the clearly established "equal protection" rights of other Americans. Griffin v. Breckenridge, 403 US 88 (1971) "intent to deprive of equal

protection, or equal privileges and immunities....The conspiracy, in other words must aim at **a deprivation of the equal enjoyment of rights secured by the law to all.**" Accordingly, No. 28,173 cannot be allowed pursuant to Constitutional laws of denial of due process by order, and constant deprivations of "equal protection" against the Defendants and other Americans by unlawful allowance of the Chapels to break state water laws and to then use those violations against the Defendants to keep the Defendants from their own statutory rights of stock ponds under the same laws. Hence, severe Constitutional error is in No. 28,173 which must be entirely reversed.

II - ISSUE OF DEPRIVATIONS OF DUE PROCESS OF CONSTITUTIONAL LAW, MAKING THE ORIGINAL TRIAL OF CV-94-10 [APRIL, 1996] JURISDICTIONALLY DEFECTIVE, ILLEGAL, AND UNCONSTITUTIONAL, AND THE FOLLOWING "JUDGEMENT AND INJUNCTION OF MAY 17, 1996", USED HENCE FORTH UNAVAILABLE AGAINST DAVID DERRINGER OR HIS REAL PROPERTY (NEVITT/DERRINGER PROPERTY) BY THE MANDATES OF THE US CONSTITUTION 14TH AMENDMENT Provisions of due process and equal protection

It is clearly documented (**Exhibit 9**) and undisputed that **DAVID DERRINGER WAS AN OWNER OF THE AFFECTED NEVITT/DERRINGER REAL PROPERTY ON SEPTEMBER 11, 1995**, nine (9) months prior to the jurisdictionally defective CV-94-10 trial of April, 1996 that unlawfully resulted in the "Judgement and Injunction of May 17, 1996" that has been used to violate state laws, deprive Constitutional and statutory rights, and attack the Private Property of the Nevitt/Derringers without legal jurisdiction ever since. Both Chapels and Judge Fitch worked "in concert" to keep out David Derringer, when Chapels were bound to include him under the

case law of United States Fid. & Guar. Co. V. Raton Natural Gas Co., 86 N.M. 160, 521 P.2d 122 (1974) "Where party seeks relief from court of equity, he must have before the Court all parties whose rights may be affected by relief sought.", and Judge Fitch was bound under oath, [SEE: footnote #1] Code of Judicial Conduct Canon 3 (B)(2)(5)(7), and under the Rules of Civil Procedure Rule 1-019(A)(2)(b) to ensure David Derringer, necessary and indispensable property owner was party to the suit before trial or dismiss the suit. Walker v. Hastings, 79 N.M. 338, 443 P.2d 508 (Ct. App. 1968) Where necessary parties are not before the Court in a timely manner for all pleadings there is nothing to be done but to dismiss the suit.; Herrera v. Springer Corp. 85 N.M. 6, 508 p.2d 1303 (Ct. App. 1973). The court cannot proceed upon to judgement in the absence of any indispensable parties.; Holguin v. Elephant Butte Irrigation District, 91 N.M. 398, 575 P.2d 88 (1977)"Without an indispensable party before judgement, this is a jurisdictional defect making the case inherently defective, and the "supreme court has always held that it is". The jurisdictionally defective CV-94-10 was defective in parties without David Derringer and had to be dismissed under the Constitution 14th Amendment. Krametbauer v. McDonald, 104 P.2d 900 44 N.M.473 "Defect of parties means too few, not too many, so that non-joinder and not misjoinder is ground for defect of parties." Additionally, the subject matter of the original CV-94-10 was over "water issues" that are inexplicably tied to "land ownership" and without David Derringer present as a named litigant before the trial of April, 1996, CV-94-10 had to be dismissed due to no legal subject matter jurisdiction. KRM Inc. v. Caviness, 122 N.M. 389, 925 P.2d 9 (Ct. App. 1996) "The statutory exception links ownership of the land with water rights." Additionally, David Derringer's legal,

statutory compliant [under 10 feet and impounding less than 10 feet of water under NMSA 1997, 72-5-32 and 72-9-3 (**Exhibits 10, 11, 12 & 13**)] stock ponds and dams were private real property assets outside of the jurisdiction of the New Mexico courts under Title 42 U.S.C. Section 1982 as they were "legal" and private and were both historical on the map of USGS Gallo Mountains East Quardrangle (**Exhibit 14**) and available for goat livestock watering under NMSA 1997, 72-5-32, 72-9-3 and under the NM Sheep and Goat Act 77-8A-1 for "beneficial use of public waters" not subjugated to any claims of downstream irrigation rights. State Bank v. McNew, 33 N.M. 414, 269 P.56 (1928) "Use of water for domestic purposes, including stock watering is "beneficial use" of water". ; Millheiser v. Long, 10 N.M. 99, 61 P.111 (1900). "Private ownership of water in public streams was prohibited, and a right to use of waters for beneficial purposes was given to those who appropriated and applied them to such uses." Chapels, Judge Fitch, and the NM Supreme Court have worked "in concert" in No. 28,173 to deprive "equal protection" of statutory rights clearly established prior to CV-94-10 that are guaranteed rights, privileges and immunities of David Derringer to raise goats as livestock under 77-8A-1, and to water those goats in dams and ponds on his private property, or to build new dams and ponds on his private property under NMSA 1978, 72-9-3 for those livestock purposes. Hence, the NM Supreme Court and the Chapel/Judge Fitch conspiracy have illegally stolen the stock waters from the Nevitt/Derringers pursuant to case laws mandated to be affirmed and supported by the NM Supreme Court of: Frank Bond & Son of Reserve Minerals Corp. 65 N.M. 257, 335 P.2d 858 (1959) **"Wrongful removal of water from stock tanks.** Trial court's submission to jury of question of damages based upon market

value of water taken and damage to appellee's stock-raising activities, in action for wrongful removal of water from stock tanks, was not error."

Clearly, David Derringer was a "**NECESSARY AND INDISPENSABLE**" deeded land owner without which CV-94-10 could never have proceeded as a matter of Constitutional law of due process. State Farm Mut. Auto. Ins. Co. v. Foundation Reserve Ins. Co., 78 N.M. 359, 431 P.2d 737 (1967) "New Mexico makes no distinction between necessary and indispensable parties; if person's interests are necessarily affected by judgement, such person is indispensable party." ; Montoya v. Department of Finance & Administration, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982)"the non-joinder of a party will result in the dismissal of a cause of action, where the party's absence will prevent the court from granting complete relief, significantly impair the interests of the absent party or expose litigants to possible multiple liability or inconsistent obligations."

The New Mexico Supreme Court is bound to these former case laws and Constitutional provisions, under their oath of office "I, (Supreme Court justices), do solemnly swear that I will support..the laws of the State of New Mexico..SO HELP ME GOD.", and are also bound under the Code of Judicial Conduct Canon 3 (B)(2) to "**SHALL** be faithful to the law" [law: as defined by Canon "denotes...constitutional provisions and decisional law." . The NM Supreme Court is bound to the US Constitution 14th Amendment, Title 42 Section 1981(a), and the NM Constitution Article 2 Section 8 for "equal protection" of all laws to all citizens of the United States.

For the NM Supreme Court to allow the Chapels to constantly re-open CV-94-10 and attempt to tie David Derringer and his real

property to the illegal, jurisdictionally defective, and unconstitutional "Judgement and Injunction of May 17, 1996" is against the US Constitution 14th Amendment, and in violation of the NM Constitution Article 2 Section 18. Accordingly, the New Mexico Supreme Court has already ruled in controlling case laws that David Derringer or his property cannot be bound to a Judgement or Injunction of which he was a **NON-PARTY** to the case. Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action." Accordingly, the Chapels cannot attempt to ever re-open CV-94-10 because it was originally jurisdictionally defective, and violated David Derringer's 14th Amendment rights of due process and equal protection of the laws, illegally seized David Derringer's property with the "Judgement and Injunction of May 17, 1996" without opportunity to be heard in violation of due process; a clear United States Constitutional violation. [SEE: Montoya v. Blackhurst, 84 N.M. 91, 500 P.2d 176 (1972); Sena v. Montoya, 346 F.Supp. 5 (D.N.M. 1972); Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L.Ed.2d 556 (1972) pre-judgement seizure of property without opportunity to be heard is unconstitutional.]Additionally David Derringer is not bound to the "Judgement and Injunction of May 17, 1996" by any "res judicata" or "law of the case" doctrines, nor is his real Nevitt/Derringer property due to David Derringer being a **NON-PARTY** before the trial of April, 1996, willfully denied opportunity to be heard by both Chapels and Judge Fitch. Three Rivers Land Co. v. Maddoux, 98 N.M. 690, 652 P.2d 240 (1982) "Res Judicata applies when four elements are met: (1) **identity of parties or**

privies; (2) identity of capacity or character of persons for or against whom the claim is made; (3) same cause of action; and (4) same subject matter."; Three Rivers Land Co. v. Maddoux, 98 N.M. 690, 652 P.2d 240 (1982) "The requirement of res judicata that a party be in the same or similar legal capacity in a suit **relates to the fundamental precept that a person cannot be bound by a judgement unless he has had reasonable notice of the claim against him and an opportunity to be heard in opposition to that claim."**; Allen v. McClellan, 77 N.M. 801, 427 P.2d 677 (1967) **"No court can make a decree which will bind anyone but a party;** it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen." Clearly, under Constitutional law, the Rule 19 attempt of David Derringer to properly enter the illegal re-opening of CV-94-10 in the year 2000 to properly collaterally attack the defective "Judgement and Injunction of May 17, 1996" was met with the additional 14th Amendment deprivations of Judge Fitch again violating Rule 19, the Code of Judicial Conduct Canon 3 (B)(2)(5)(7), and the entry of David Derringer into CV-94-10 at that time and hence forth does not constitute due process to illegally tie David Derringer to the illegal, unconstitutional, and jurisdictionally defective CV-94-10 and cannot bind David Derringer or his property to the "Judgement and Injunction of May 17, 1996." as an illegal act that David Derringer was **NON-PARTY** to. Adams v. United Steelworkers of America AFL-CIO, 97 N.M. 369, 640 P.2d 475 (1982) "When the duty sued upon stems from different roots in the prior and subsequent actions, even if both actions involve essentially the same course of wrongful conduct, it is indicated that the suits arise from different causes of action."

Accordingly, the NM Supreme Court in No. 28,173 has illegally allowed a jurisdictionally defective CV-94-10 to again be unlawfully re-opened, and now directly makes orders to illegally deprive due process, order forfeiture of equal protection, order criminal acts taken against the real property of the Nevitt/Derringers, and orders private legal structures within said legal private property to be destroyed by the criminals of Chapels and Judge Fitch, wherein no jurisdiction exists pursuant to federal law Private Property Act of Title 42 Section 1982. The violations of the NM Supreme Court of oaths, Code of Judicial Conduct, US and NM Constitution, and controlling case laws are glaringly apparent, and cannot stand as a rational decision. Thus, No. 28,173 must be reversed as a matter of Constitutional laws of the United States of America or be immediately taken to the United States Supreme Court as Constitutional violations of the New Mexico Supreme Court.

III ISSUE OF DEPRIVATIONS OF LEGAL PROPERTY RIGHTS, "EQUAL PROTECTION" OF THE STATUTORY LAWS ENABLING EXERCISING OF STATUTORY RIGHTS, AND ORDERS TO DESTROY LEGAL AND PRIVATE ROADS OF ACCESS TO RESIDENCE

The Nevitt/Derringers are allowed the rights to buy, own and protect private property in the United States under the Private Property Act of Title 42 U.S.C. Section 1982, the US Constitution, and under the NM Constitution Article 2 Sections 4, 10, 18 and 23. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 (1968) No. 645 "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. Congress provided that the right to real and personal

property was to be enjoyed equally throughout the United States, and that right was to be secured against interference from any source whatever, whether governmental or private." ; City of Memphis v. Greene, Tenn. 1981 101 S. Court 1584, 451 US 100, 67 L.Ed.2d 769 rehearing denied 101 S. Ct. 3100, 452 US 955, 69 L.Ed.2d 965 "Private Individuals-This section [Title 42 U.S.C. Section 1982] guaranteeing all citizens of the US the same right as is enjoyed by white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property is directly applicable to private parties." Accordingly, without jurisdiction by any means of provisions of proprietary use, contractual agreement, or monetary investment, the New Mexico Courts, nor the Chapels have any jurisdiction over the legal and statutory compliant stock ponds located on the private property of the Nevitt/Derringers, and cannot thus order deprivations, cannot order movement or destruction, and cannot limit the legal use of these stock ponds under the guaranteed "equal protection" of state statutes NMSA 1997, 72-5-32 and 72-9-3. Accordingly, Supreme Court justices work well outside of jurisdiction and judicial capacity in No. 28,173 to order any actions taken to limit, define, obstruct, injunct against, or orders to modify, destroy, or inhibit any legal stock ponds on the Nevitt/Derringer real property as protected assets of a Private nature within the meaning of Title 42 Section 1982 of the United States Code and available for goat livestock watering as defined by the legislature, and the New Mexico Supreme Court has to abide by the legal abilities of the Nevitt/Derringers to use statutory laws 72-5-32 and 72-9-3 for the benefit of their legal property. State v. Southern Pacific Co., 281 P.29, 34 NM 306 "N.M. 1929 Statutes, though imperfect in form, should be upheld and sustained by the courts, if they can be construed as to give sensible effect and to

render them of binding force." ; State ex rel. Rodriquez v. American Lefion Post No. 99, 106 N.M. 784, 788, 750 P.2d 1110, 1114 (Ct. App.) "Act may be changed through legislative therapy, not judicial surgery., cert denied, 106 N.M. 588, 746 P.2d 1120 (1987) and 107 N.M. 16, 751 P.2d 700 (1988). Accordingly, the New Mexico Supreme Court has no authority, jurisdiction or judicial capacity to order any deprivations to the legal Nevitt/Derringer stock ponds, nor any illegal persecution or selective punishment for the legal ownership or use thereof. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) "shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

Additionally, this court, nor any other has any jurisdiction or judicial capacity to order any destruction, movement or limit to the roads of access to the home of the Nevitt/Derringers pursuant to previously formed nationwide case laws prohibiting any court from "dictating" the means of access on private lands and Chapels cannot even enter the private property of the Nevitt/Derringers or order or do destruction to the private road of access to the Nevitt/Derringer home by the mandates, privileges, rights and immunities the Nevitt/Derringers have under the US Constitution 14th Amendments and Title 42 U.S.C. Section 1981(a), for equal protection of all laws. Twin Caney Watershed Joint Dist. V. Emit J. Carra Ks Court of Appeals No. 50326 It was held that landowner is entitled to road if water is of sufficient quantity and character as to preclude him from reasonable access. The existence of a river, stream or similar body of water obstructing the access to property the Court held: "that was sufficient necessity that existed for

establishment of ways of necessity"; Higginson v. Wstergard Id 604 P.2d 51 An action to compel property owner to remove dike allegedly interfering with flow of river adjacent to his property, **the Court held that the property owner did not violate the terms of his streambed**; Ritchely v. Welsh (1898) 149 Ind 214, 48 NE 1031 The Court stated that when a right-of-way by necessity is once selected, it cannot be changed without consent. ; Manning v. Port R.R. Co (1986) 54 NJ Eq. 46, 33 A 802 that the Court held that it "did not have the power to block an existing right-of-way by necessity, previously used by the owner."

Thus, No. 28,173 unlawfully deprives equal protection of the laws, and illegally punishes the Defendants of the illegal case CV-94-10 by a grievous "injustice" of legal injunction, illegal damages against legal private property, illegal orders to Chapels to trespass and destroy legal property in criminal violation of NMSA 30-14-1 and 30-15-1, all without jurisdiction under the Constitution of the United States of America, and thus No. 28,173 is available for immediate appeal to the United States Supreme Court if not reversed in its entirety as a matter of Constitutional laws.

IV Issue of "ENSLAVEMENT" AND "INVOLUNTARY SERVITUDE" IN VIOLATION OF THE 13TH AMENDMENT

The Supreme Court No. 28,173 violates the 13th Amendment of the United States Constitution, against the Defendants of the illegal CV-94-10, as above defined by "subjugating" the Nevitt/Derringers to Chapels' illegal 14.3 foot dam in statutory violation of the New Mexico Constitution and water statutes, not available for the Chapels

to own under NMSA 1978, 72-5-39 or under 72-5-1, or to be able to take control the private property or legal stock ponds of the Nevitt/Derringers by violations of equal protection of the previously defined statutes 72-5-32 and 72-9-3 as defined by the New Mexico Legislature. Accordingly, the New Mexico Supreme Court in No. 28,173 punish the Defendants of the illegal CV-94-10 with illegal fines and other monetary damages for legal ownership of their stock ponds, with use of Chapel's illegal 14.3 foot dam without the mandated permit and engineered design before construction by "singling-out" the Chapels to do "enslavement" and damage to the Nevitt/Derringers not as provided for under law, but with bias and preferential treatment to cause cruel and unusual punishment against the Nevitt/Derringers against the United States Constitution 13th Amendment. Additionally, the New Mexico Supreme Court No. 28,173 agrees to take the due process from the Nevitt/Derringers, forbidding them to defend themselves in any court of law in the United States, as is undeniably provided for under the 14th Amendment; No. 28,173 unconstitutionally denying 14th Amendment rights of due process and equal protection to be uninhibited to file complaints, motions, discovery requests, pleading and other legal papers, and to be afforded the rights for self "Pro-Se" representation in any United States court. Accordingly, the unconstitutional deprivations of due process of No. 28,173 "enslave" the Defendants to both the Chapels' criminal fraud and illegal re-opening of CV-94-10, based in abuse of process and malicious prosecution, and violate directly the 13th Amendment of the United States Constitution that each

Supreme Court justice "swore to God" to uphold. Hence the Supreme Court No. 28,173 must be reversed in its entirety as a matter of Constitutional laws.

V ISSUE OF VIOLATIONS OF THE UNITED STATES CONSTITUTION 14TH AMENDMENT SECTION 3

The New Mexico Supreme Court has working outside of authority, jurisdiction and outside of judicial capacity to render the No. 28,173 decision to confirm and uphold the direct attack from Judge Fitch, Alarid, Fry and Pickard upon the United States Constitution, to "order" deprivations of due process, equal protection, and order criminal acts taken in punishment against and persecution of the Nevitt/Derringers, and have upheld orders to destroy private property in violation of federal laws Title 42 Section 1981(a), Title 42 Section 1982 and in violation of the 14th Amendment. Such No. 28,173 decision, therefore is in direct violation of oath of office, Code of Judicial Conduct, and in violation of the 14th Amendment Section 3 forbidding any justice to order deprivations of any provisions of the United States Constitution. Hence, the New Mexico Supreme Court is mandated under the United States Constitution to reverse the decisions of No. 28,173 or immediate Petition for Writ of Certiorari is available to the Defendants of the illegal CV-94-10 under the provisions of the Supreme Court of the United States Rules Part III Rule 10(b)(c) for the state court of last resort violating the United States Constitution with malice and forethought against clearly established rights, privileges and immunities of the Nevitt/Derringers with intent to mis-use power to ruin the lives of the Nevitt/Derringers. Stump v. Sparkman, 435 U.S. 349

(1978) "A judge will be subject to liability when he has acted in the clear absence of all jurisdiction."; In re Rochkind, 128 B.R. 520 Mich. 1991 "To use power of public office as judge to ruin another for personal gain plainly violates several provisions of the Code of Judicial Conduct Canons 1, 2, 3, 5; Such conduct may also constitute crime Canons 1-3, 5."

VI ISSUE OF CLEAR VIOLATIONS OF CONSTITUTIONAL LAW MANDATE REVERSAL OF NO. 28,173 UNDER MANIFEST "INJUSTICE" AND "JUDICIAL TERRORISM" UNDER THE PROVISIONS OF RULE 1-060(B)(1)(3)(4).

This Motion for Reconsideration is a legal attempt to serve truth and justice, prevent ongoing and additional "mistake" by provision of Rule 1-060(b)(1) providing for reconsideration of judgements "where **the judge has made a substantive mistake of law or fact** in the final judgement or order" Cashner v. Freedom Stores, Inc., 98 F.3d 572, 576 (**10th Cir. 1996**). The Motion to Reconsider also serves judicial economy to not burden the United States Supreme Court with clear Constitutional violations and vindictive persecution of the Defendants of the illegal CV-94-10 by the New Mexico Supreme Courts violations of oaths and disregard for the rights of Americans. The New Mexico Supreme Court cannot single out and protect Chapels' fraud of use of Chapel's illegal dam to control the Nevitt/Derringers, nor can the NM Supreme Court use "order" against the 14th Amendment to stop the "whistleblowing" litigation of the court public corruption or the Chapel/Judge Fitch conspiracy of "racketeering". Since the one document (**Exhibit 9**) is all that is needed to prove David Derringer a property owner denied due process before the trial

of CV-94-10, and the Judgement and Injunction of May 17, 1996 plainly does not bear David Derringer's name in litigation, CV-94-10 was defective in parties and subject matter and could not have occurred without David Derringer as a party Defendant prior to April, 1996 since David Derringer has been proven to be deprived of due process and "equal protection" when David Derringer has been proven to be a **NON-PARTY** to the claimed underlying Judgement and Injunction of May 17, 1996 of CV-94-10, all further aspects thus being fraud, misrepresentation, and misconduct additionally preventing statutory rights of the Plaintiff. **SEE:** Anderson v. Department of Health and Human Services, 907 F.ed 936, 952 (**10th Cir. 1990**) Clearly, without David Derringer being able to represent himself in the trial of Chapel's fraud of April, 1996, due process was denied for David Derringer to protect his real property by no ability to present evidence, Defendant testimony or even pleadings. This egregious act of Judge Fitch's violation of oath, Judicial Conduct and violations of the Rules of Civil Procedure Rule 19 prevented the due process under the 14th Amendment by fraud. **SEE**: Walsh v. McCain Foods Ltd., 81 F.ed 722, 726 (**7th Cir. 1996**) Accordingly, Chapels' Complaint of CV-94-10 had to be dismissed and the counterclaim had to prevail. **SEE**: Wilkin v. Sunbeam Corp., 466 F.2d 714, 717 (**10th Cir. 1972**)

Clearly, the CV-94-10 Judgement and Injunction of May 17, 1996 is "void" against David Derringer as a **NON-PARTY** wherein the claimed underlying case of CV-94-10 lacked jurisdiction of both parties and subject matter, not being able to have gone to trial in April, 1996 without all necessary and

indispensable parties before the courts, and wherein it had no legal jurisdiction on the statutory compliant, private stock ponds of the Plaintiff, and clearly acted in violation of David Derringer's 14th Amendment rights of due process and equal protection. **SEE**: United States v. Buck, 281 F.3d 1336, 1344 (10th Cir. 2002) "A judgement is void..if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law."

Undisputed and Documented Facts

This underlying matter involved attorney Fitch already conducting fraud and proven forgery in 1992-1994 against the Nevitt/Derringer property for Chapels when he represented Ray Eichner and gave his clients land away to assist Chapels acquisition of same about May 11, 1994. (**Exhibit 15**) On May 13, two days later, Chapels filed suit against the Nevitt property by fraudulent use of a proven 14.3 foot statutorily violating dam in malicious prosecution to drive out the Nevitt/Derringer family so that the "racketeering" could continue in the remote canyon in which the Chapel/Fitch conspiracy was working. Chapels were proven to have conducted fraud to the courts by Mick Chapel's testimony of June 14, 1994 and in his deposition of October 12, 1994,(**Exhibit 1 & 2**) wherein he admitted to destruction of the prior Frank Armijo dam of Declaration #02311 and construction of the illegal 14.3 foot dam in 1984. The state engineer confirmed this illegal Chapel fraud of a dam at 14 feet in the OSE Derringer v. Chapel Memo May 22, 1995. (**Exhibit 3**) Chapel and then Judge Fitch teamed up to defraud the courts

in the jurisdictionally defective trial of April, 1996 with "Question #1"[32] to dupe the jury into believing the Chapels' illegal 14.3 foot dam was still the original Frank Armijo dam that Chapels destroyed in 1984. Judge Fitch maliciously violated Rule 19, Code of Judicial Conduct Canon 3 (B)(2)(5)(7) to keep out David Derringer, deeded (**Exhibit 9**) necessary and indispensable property owner, to consummate the Chapels' fraud, and continued to the trial in jurisdictional defect denying due process. **SEE:** State ex rel Walker v. Hastings, 79 N.M. 338, 443 P.2d 508 (**Ct. App. 1968**). The illegal, unconstitutional and jurisdictionally defective "Judgement and Injunction of May 17, 1996" (**Exhibit 16**) was not legally binding on David Derringer as a **NON-PARTY** that deprived his Constitutional 14th Amendment rights of due process, illegally attached his real property and deprived due process and the equal protection to have his legal stock ponds as provided for by law. Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 Supreme Court of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action." Fitch later "**orders**" a complete deprivation of the Nevitt/Derringer's constitutional rights of due process in the Order of January 28, 2003 and again on February 12, 2003. (**Exhibits 7**) in a total

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"Did Frank Armijo construct a dam on the Chapel property which did not exceed 10 feet in height and did not impound more than 10 acre feet of water?"

violation of oath of office [33], in a direct violation of the 14th Amendment Section 3, and to stop David Derringer and Susan Nevitt from further litigation against Judge Fitch in federal court, and to stop further litigation over the Chapel/Fitch violent and illegal acts of conspiracy and to stop the "whistleblowing" on Judge Fitch's corruption without jurisdiction.[Chapels' dam is still in proven statutory violation by the GPS survey of 6-21-2001 (**Exhibit 7**)] Fitch also illegally punished the Nevitt/Derringers with monetary damages and illegal injunction against legal, private stock ponds on the real property outside of any legal jurisdiction of Fitch pursuant to Title 42 Section 1982. (**Exhibits 10, 11, 12, 13 & 14**) On appeal, the justices Alarid, Fry and Pickard attempted to keep the "court record" out of the forthcoming illegal decisions by placing the appeal on Summary calendar and refusing to change to General for the court record to be considered. **SEE**: C. Wright, A. Miller, & M. Kane Federal Practice and Procedure 2860 (2nd ed. 1995) The proof of Chapels' fraud, Fitch's violation of 14th Amendments and violation of "equal protection" to deprive legal stock ponds to the Nevitt/Derringers is easily seen in the court record of CV-94-10 wherein it is "jurisdictionally defective" without David Derringer as **NON-PARTY** in the Judgement and Injunction

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Oath taken by Judges Fitch, Alarid, Fry and Pickard: "I, (judge) do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico, and that I will faithfully and impartially discharge the duties of the office of Judge on which I am about to enter, to the best of my ability, SO HELP ME GOD."

of May 17, 1996. However, the Nevitt/Derringers made sure that Judges Alarid, Fry and Pickard were aware that David Derringer was a legal property owner (**Exhibit 9**) and wherein he was deprived any opportunity to be heard in the jurisdictionally and illegal Judgement and Injunction of May 17, 1996, (**Exhibit 16**) that is illegally used to control the matter of CV-94-10, and thus he could never be bound by any CV-94-10 decision which already had taken 14th Amendment rights of due process, equal protection, and is used to illegally "enslave" him in violation of the 13th Amendment. The Defendants produced Docketing Statements, Memorandum Responses, Motions for Reconsideration, and other pleadings that specified the facts, controlling case laws, and Constitutions that prohibited these justices from defiling their oath meant to obey the US and NM Constitutions, and wherein they could not continue to single-out the Chapels to be able to continue to violate state water laws with a 14.3 foot dam. **SEE**: State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959, and Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981. Accordingly, justices Fitch, Alarid, Fry and Pickard and now the New Mexico Supreme Court, knowingly and maliciously violate their own oath of office to purposefully affirm the deprivation of the Nevitt/Derringer rights to due process and equal protection of all laws, by affirming Fitch's order to stop further complaints, motions, discovery requests, pleadings, or other legal papers, and to deny Pro-Se

representation, and to financially punish the Defendants for legal ownership of private real property outside of their jurisdiction and judicial capacity pursuant to Title 42 Section 1982, and to continue to persecute the Nevitt/Derringers by use of Chapels illegal dam of 14.3 feet in "enslavement" and deprivations of "equal protection", and to continue to single out the Chapels as available to violate state laws and use those same violations upon the Nevitt/Derringers in violation of the 14th Amendment; such actions by New Mexico Supreme Court, and Judges Fitch, Alarid, Fry and Pickard mandating their removal from the bench under the 14th Amendment Sect. 3.

Jurisdictionally defective CV-94-10 must be dismissed under No. 28,173 in clearly, what this NM Supreme Court must take notice of Constitutional violations prohibited by the 13 and 14th Amendments. Because of violations of due process of all Defendants, and deprivations of equal protection, the underlying Constitutional issues prevents No. 28,173.

There are basically **THREE ISSUES** to take into account in this matter: **(1)** the initial and ongoing fraud of Chapels 14.3 foot dam [34] that was **FRAUD** prior to CV-94-10, a dam that is

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Chapels' dam was proven at 14 feet on **May 22, 1995** by the State Engineer OSE May 22, 1995 Memo Derringer v. Chapel prior to the *"Question #1"* of April, 1996 in the jury trial of CV-94-10; proven at 14.3 feet or greater by Hydroscience on Feb. 12, 1999; proven at 14.3 feet by Quail Springs Survey Co.by GPS on June 21, 2001; and proven at 14.3 feet in violation of state laws by AK Geoconsult PHD Alan Kuhn engineer/hydrologist on June 29, 2001, and being used to criminally trespass water onto the upstream Nevitt/Derringer property by Chapel. Chapels have never "contested" the surveys of their dam that is in proven violation at 14.3 feet. This dam cannot exist by NM Constitutional law Article 16, whether the

prohibited at any time by the NM Constitution Article 16 and NMSA 1978, 72-5-39 in violation of "equal protection" **(2)** the denial and forced deprivation of David Derringer initially to CV-94-10 as his joinder was **MANDATED** before the trial of April, 1996, by Rule 19(A)(2)(b) and the Code of Judicial Conduct Canon 3 (B)(2)(7), and under oath of judicial office, in a violation of due process 14th Amendment rights **precluding** the first jury trial of CV-94-10 from ever legally happening in April, 1996, wherein the "*Judgement and Injunction of May 17, 1996*" could never have been legally consummated and is jurisdictionally defective **(3)** the **fraud** and **non-jurisdictional** deprivation of "equal protection" US Constitutional violations of taking the guaranteed statutory rights to stock ponds from the Nevitt/Derringers under 72-5-32 and 72-9-3, and doing so without any opportunity to be heard by David Derringer in violation of 14th Amendment rights, and wherein no party, justice or other entity has ever had legal jurisdiction over these legal, statutory compliant "**PRIVATE**" stock ponds pursuant to the Private Property Act of Title 42 Section 1982.

Chapels claim to have a water right or not. Chapels conduct this fraud to circumvent the extreme penalties for their acts of stealing public waters where the Chapels are prosecute able under NMSA 1978, 72-8-4, 72-8-6 and 72-12-11 for an illegal dam without permit or engineered design prior to their unlawful construction in 1984. **SEE:** Chapels testimony of June 14, 1994 and deposition of Mick Chapel of October 12, 1994.

Accordingly, the invalid claim of underlying CV-94-10 of this matter of No. 28,173 can easily be broken down into:

(1) Rule 1-060(b)(1) "**MISTAKE**": 14th Amendment violations and lack of party and subject matter jurisdiction, "where **the judge has made a substantive mistake of law or fact** in the final judgement or order" Cashner v. Freedom Stores, Inc., 98 F.3d 572, 576 **(10th Cir. 1996)** wherein CV-94-10 was jurisdictionally defective in parties without necessary and indispensable deeded land owner David Derringer and could not legally have gone to a jury trial, and wherein Fitch had no controlling subject matter jurisdiction under Title 42 Section 1982 concerning the Nevitt/Derringer private stock ponds, and in this matter there was conspiracy of Chapel/Fitch to violate the NM Constitution Article 16 that "prohibits" Chapel's 14.3 foot dam hence without Fitch's jurisdiction due to oath of office [35],and with Chapel's "already proven" 14 foot dam to use Chapel's violation of law continuously against the Nevitt/Derringers being a direct violation of "equal protection" for all Americans, and with David Derringer tied directly to the

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I, Judge Thomas Fitch, do solemnly swear that I will support the Constitution of the United States **and the Constitution and laws of New Mexico**, and that I will faithfully and impartially discharge the duties of the office of Judge on which I am about to enter, to the best of my ability, SO HELP ME GOD."

water issues of the property, Judge Fitch had no subject matter jurisdiction over any aspects of a **water suit** without David Derringer, property owner, as a named Defendant. KRM Inc. v. Caviness, 122 N.M. 389, 925 P.2d 9 (Ct. App. 1996) "The statutory exception **links ownership of the land with water rights**."

(2) Rule 1-060(b)(3) "**FRAUD**": The fraud of Chapels perjury and misrepresentations to all courts starting with "Question #1" fraudulently misrepresenting the "already proven" 14 foot Chapel dam as only "less than 10 feet", in the trial of April, 1996 of CV-94-10 rendering of use of Chapel's illegal dam to control and "enslave" the Nevitt/Derringers and their legal stock ponds upon their property, with deprivation of due process and "equal protection" when David Derringer has been proven to be a **NON-PARTY** to the claimed underlying Judgement and Injunction of May 17, 1996 of CV-94-10; "all further aspects thus being fraud, misrepresentation, and misconduct additionally preventing Constitutional and statutory rights of the Nevitt/Derringers." **SEE:** Anderson v. Department of Health and Human Services, 907 F.2d 936, 952 (**10th Cir. 1990**)

(3) Rule 1-060(b)(4) "**VOID**": Wherein CV-94-10 is completely void without proper due process 14th Amendment rights of David Derringer, and deprivations of equal protection

as mandated under Constitutions, due to no jurisdiction of parties and no subject matter jurisdiction of the legal, private stock ponds of the Nevitt/Derringers, and no jurisdiction to over-ride the NM Constitution Article 16 to single-out the Chapels as available to own and use a 14.3 foot dam in violation of the NM Constitution Article 16 and NMSA 1978, 72-5-32, and violations of 14th Amendment rights of due process and "equal protection"ever since the Judgement and Injunction of May 17, 1996. **SEE**: Wilkin v. Sunbeam Corp., 466 F.2d 714, 717 **(10th Cir. 1972)** Clearly, the CV-94-10 *Judgement and Injunction of May 17, 1996* is "**void**" against David Derringer as a **NON-PARTY** wherein the claimed underlying case of CV-94-10 lacked jurisdiction of both parties and subject matter, not being able to have gone to any jury trial in April, 1996 and thus is also "void" against the Nevitt/Derringer real property to ever obtain the Judgement and Injunction of May 17, 1996, without all necessary and indispensable parties before the courts; and wherein it had no legal jurisdiction on the statutory compliant, private stock ponds of the Defendants, and Fitch clearly acted in violation of David Derringer's 14th Amendment rights of due process and equal protection without jurisdiction or judicial capacity at any time. **SEE**: the face of the May 17, 1996 Judgement and Injunction **with David Derringer as NON-PARTY.**

THEREFORE, New Mexico Supreme Court decision to abandon the United States Constitutional provisions in No. 28,173 and to confirm orders to do Constitutional and Civil Rights damages, obstructions, and deprivations against the Nevitt/Derringer and to order illegal punishment for legal ownership and legal available use of statutorily compliant stock ponds must be reversed as a matter of Constitutional laws.

By: /s/ David Derringer, Susan Nevitt, Norma Nevitt
Pro-Se
P.O. Box 157
Quemado, New Mexico 87829

EXHIBIT "A"

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
CASE No. 28,173
District Court Case CV-94-10
Court of Appeals No. 23,815

MICK C. CHAPEL and JENNIFER CHAPEL,

Plaintiffs-Respondents,

vs

SUSAN NEVITT, NORMA NEVITT and DAVID DERRINGER,

Defendants-Petitioners,

AFFIDAVIT OF DAVID DERRINGER, SUSAN NEVITT & NORMA NEVITT PURSUANT TO RULE 1-059(C)

STATE OF NEW MEXICO)
) ss.
COUNTY OF CATRON)

David Derringer, Susan Nevitt and Norma Nevitt, being first duly sworn, deposes and states as follows:

1. I, David Derringer, was denied my 14th Amendment rights of due process and equal protection and prohibited from litigating and defending my deeded property known as the NE 1/4 of the SE 1/4 of Section 28, TS2S, Range 17 West, located in Catron County New Mexico in the jurisdictionally defective April, 1996 trial of CV-94-10, and thence under state case laws I, NOR MY LEGAL PROPERTY, cannot be bound to the illegal, jurisdictionally defective and unconstitutional "Judgment and Injunction of May 17, 1996 of which I was a **NON-PARTY**. Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 SUPREME COURT OF NEW MEXICO 503 P.2d 323, 84 N.M. 343 November 24, 1972 "Law of the Case doctrine is binding only on those persons who were parties to that particular action." ; Allen v. McClellan, 77 N.M. 801, 427 P.2d 677 (1967) "No court can make a decree which will bind anyone but a party; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen." Because I was a **NON-PARTY** to CV-94-10 during the litigation of the

"Judgement and Injunction of May 17, 1996, there is no "res judicata" that pertains to me or my real property and I cannot be held to this illegal act, deprived of any opportunity to be heard, and since deprived of any availability for collateral attack of this Chapel fraud. Three Rivers Land Co. v. Maddoux, 98 N.M. 690, 652 P.2d 240 (1982) "The requirement of res judicata that a party be in the same or similar legal capacity in a suit relates to the fundamental precept that **a person cannot be bound by a judgement unless he has had reasonable notice of the claim against him and an opportunity to be heard in opposition to that claim.**" Judge Fitch violated the Rules of Civil Procedure Rule 1-019 when he was mandated by Rule 1-019(A)(2)(b) to join me as a named party Defendant in Catron County Case CV-94-10 before the original trial, and thus it was Judge Fitch and the Chapels that made CV-94-10 jurisdictionally defective in parties by deprivation of my 14th Amendment rights of due process working in conspiracy with each other to deny my Constitutional rights. United States v. Guest, US 745 (1966); Griffin v. Breckenridge, 403 US 88 (1971) Chief Justice Warren, Justice Douglas & Justice Brennan's opinion at 774. "Section 5 empowers Congress to enact laws punishing all conspiracies to interfere with the exercise of Fourteenth Amendment rights, whether or not state officers or others acting under the color of state law are implicated in the conspiracy." Judge Fitch violated the Code of Judicial Conduct Canon 3 (B)(2)(5)(7) to keep me out of CV-94-10 and then illegally attached and seized my property without any due process or opportunity to be heard. Judge Fitch and

Chapels then illegally placed an Injunction against my property depriving further my 14th Amendment rights of equal protection and deprived me from exercising my statutory rights in New Mexico under 72-5-32 and 72-9-3 and 77-8A-1 to use my historical stock ponds in place for 50 years for watering my livestock goats as intended by the legislature and my rights of equal protection of the laws.

2. I, DEFENDANTS, David Derringer, Susan Nevitt, and Norma Nevitt, have personal knowledge and the documents and surveys to prove the Chapel dam at 14.3 feet in violation of state laws 72-5-32, 72-9-3, 72-5-1 and 72-5-39, an illegal dam under any circumstances of water rights claims pursuant to NMSA 1978, 72-8-4, 72-8-6 and 72-12-11, and that Chapels use this dam to illegally irrigate 26 undefined acres with public water in violation of the New Mexico Constitution Article 16, and that the justices of Fitch, Alarid, Fry, Pickard and the New Mexico Supreme Court are violating all aspects of our, and other Americans' rights of equal protection of the laws to single-out the Chapels as breaking state water laws, punishable by fines and jail, and allow the Chapels to use that statutory violation not only to criminally steal public waters, but to take and deprive our rights of due process and equal protection by use of that illegal act. Chapels are then allowed to "enslave" the persons and properties of the Nevitt/Derringers in a direct violation of the 13th and 14th Amendments, and this violation of oath of office is condoned by the NM Supreme Court in violation of their own case law forbidding this illegal Chapel act. State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion

Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959 "**No right to the use of water..was obtained by its use by defendants in violation of law, NOR CAN IT BE.**" The Chapel's dam in statutory violation of state water laws is prohibited by the NM Constitution Article 16, and thus the NM Supreme Court knowingly violates not only the US Constitution 14th Amendment, Title 42 Section 1981(a), but violates the NM Constitution Article 2 Section 18 to allow the Chapels to break state laws with impunity, and use those violations against the Nevitt/Derringers. It has been proven that the Chapel dam has been 14.3 feet currently and since 1984 and impounds twice the statutory limit of water under NMSA 1978, 72-5-32. It has also been proven that Chapels have no Pre-1907 water rights with the Frank Armijo Declaration #02311 proven invalid and even if a valid claim to any water rights existed, Chapels have forfeited that right with a dam in constant statutory violation of state laws. Thus, the NM Supreme Court persecutes the Defendants in Constitutional violations with the Order of No. 28,173.

3. The above Defendants certify that the Nevitt/Derringers' two historical stock ponds located on their property are in statutory compliance of under 10 feet and impound less than 10 feet of water, and thus are private and outside of any jurisdiction of any NM Court or the Chapels. The Defendants have specific legal surveys to prove the dam and impoundment capacity of these two stock ponds, and thus have the legal availability to own and use these stock ponds for livestock watering of goats and other livestock as the New

Mexico legislature intended without illegal obstruction from the New Mexico courts or the Chapels, pursuant to the equal protection of the laws 72-5-32, 72-9-3 and the New Mexico Sheep and Goat Act of 77-8A-1. The United States Constitution and the New Mexico Constitution guarantee the equal protection of the laws for the Nevitt/Derringers. The NM Supreme Court has violated this equal protection without authority, jurisdiction or judicial capacity in the No. 28,173 Order.

4. The above Defendants have been ordered by Judge Fitch, Alarid, Fry and Pickard to have no further due process rights of litigation and not to be allowed to represent themselves Pro-Se as intended by the US Constitution 14th Amendment, and thus the Supreme Court of New Mexico confirming that illegal attack on the United States constitutes sedition, treason and all attending justices must be removed from public office under the 14th Amendment Section 3. The above Defendants have an undeniable Constitutional right to file complaints, pleadings, motions, discovery requests, or any other legal papers in any litigation in any court in the United States as a right under the 14th Amendment not to be infringed by the NM Supreme Court or lower justices, and the above Defendants have the undeniable right to represent themselves Pro-Se in any court of law in the United States in freedom, liberty, and Constitutional 14th Amendment rights of due process. The NM Supreme Court has taken those Constitutional rights with the No. 28,173 Order.

5. The above Defendants have the clear, rights, privileges and immunities to purchase, hold/own and use private lands and

the legal structures there encompassed as United States citizens under the Private Property Act of Title 42 U.S.C. Section 1982, and by the mandates of the United States Supreme Court; and the NM Supreme Court or lower justices cannot persecute, fine, order damages, order destruction, criminally attack, or use any other means to produce hate crimes or punishment against the legal ownership of the private stock ponds and roads of access located on the private Nevitt/Derringer property. City of Memphis v. Greene, Tenn. 1981 101 S. Court 1584, 451 US 100, 67 L.Ed.2d 769 rehearing denied 101 S. Ct. 3100, 452 US 955, 69 L.Ed.2d 965 "Private Individuals-This section [Title 42 U.S.C. Section 1982] guaranteeing all citizens of the US the same right as is enjoyed by white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property is directly applicable to private parties."

6. The above Defendants have the rights of equal protection of the criminal statutes of the United States and of New Mexico and no one can trespass on the Nevitt/Derringer private property, no one can destroy any private or real property of the Defendants, and no one can threaten, intimidate, coerce, attack, or persecute the Nevitt/Derringers regarding their own private stock ponds and private roads of access to their home, and no one can order, pay, or otherwise conspire with others to achieve any violations of the above, as the Nevitt/Derringers are protected against such criminals by the federal and New Mexico criminal code and the equal protection of the laws by Constitutional mandate of the 14th Amendment and NM Constitution Article 2 Section 4, 10, 18

and 23.

7. We, the undersigned, have personal proof by a GPS survey of 6-20-2001 that the Chapel's dam is not the Frank Armijo dam of 1968 they still claim in perjury and fraud to the court and that the Chapels have conducted perjury, fraud and falsification of the records to all courts to ensure they keep violating state laws in fraud. The NM Supreme Court has condoned this known fraud with Order No. 28,173.

8. We have documents and personal knowledge that there is a civil and criminal conspiracy going on with members Mick Chapel, Jennifer Chapel, Joseph Manges, Thomas C. Turney, Louis O'Dell, Victor Kovach, Wayne Canon, Andrew Core, Tanya Scott, Judge Kase III, Judge Fitch, Judge Alarid, Judge Fry, and Judge Pickard, to violate the state laws of New Mexico for the Chapels with all members having full knowledge that Chapels are in current violation of law and illegally using that violation of law to conduct perjury and fraud to the courts, falsifying court and public records.

9. We have witnessed Judge Fitch, Alarid, Fry, and Pickard violate the Code of Judicial Conduct Canon 3 (B)(2)(5)(7), violate their oaths of office, violate the Supreme Court Rules of Civil Procedure Rule 1-006, Rule 1-019, and Rule 1-088(D) for the illegal protection of the Chapels, and concurrently violate the New Mexico Constitution Article 16, and Article 2, Sections 4, 10, 18 and 23 and the US Constitution 13th and 14th Amendment, and the New Mexico Supreme Court, aware of these violations takes no Superintending Control of these violations of oath and attack on the Constitutions as is mandated, but instead protects and

enters into the Constitutional attack with these lower state justices against the Defendants.

10. We have the documents to prove that the New Mexico Supreme Court is acting in this conspiracy against rights with violations of Constitutions, their own case laws, and all New Mexico statutes to protect the fraud and violations of water statutes of the Chapels and to stop the ongoing legal Defendants litigation by unlawful acts of "orders" to deny due process and equal protection, and thus, if the New Mexico Supreme Court does not reverse No. 28,173 in compliance with Constitutional provisions, state statutes and previous case laws, as they are bound by oath and the Code of Judicial Conduct, the above Defendants will take the Constitutional violations of the New Mexico Supreme Court directly to the United States Supreme Court under Section III Rule 10(B)(C) to achieve Constitutional compliance as Americans are due in a "whistleblowing" litigation that will continue to expose the clear public and judicial corruption of the New Mexico courts, and will continue to expose these Constitutional violations to the United States Legislative House Judiciary Committee for impeachment proceedings.

Further, affiants sayeth naught.

By: /s/ David Derringer, Susan Nevitt,Norma Nevitt

SUBSCRIBED AND SWORN TO before me this 25th day of August, 2003 by /s/ Laura Clem

Notary Public

(SEAL) My commission expires 12/20/06